# EXHIBIT A

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

FG HEMISPHERE ASSOCIATES, L.L.C.

Plaintiff,

REPUBLIQUE DU CONGO

Defendant,

and

CMS OIL AND GAS COMPANY, et. al.,

Putative Garnishees.

CIVIL ACTION No. H-02-4261

#### **DECLARATION OF MARYSE BERNARD**

#### I, Maryse Bernard, declare:

- 1. My name is Maryse Bernard. I am President of CMS Nomeco Congo LLC, which was formerly known as CMS Nomeco Congo Inc. ("CMS Nomeco"). I have held that position since 19 October 2004. I am also President of The Nuevo Congo LLC, which was formerly known as The Nuevo Congo Company ("Nuevo Congo"). I have held that position since 19 October 2004. I have personal knowledge concerning the facts set out in this declaration.
- 2. CMS Nomeco, Nuevo Congo, and Nuevo Congo Ltd. (collectively "Garnishees") and Société Nationale des Pétroles du Congo ("SNPC," the Congolese state-owned oil company) are the current working interest owners under a Convention for oil production in Congolese waters originally entered into in May 1979 ("the Convention"). CMS Nomeco is the current operator under the Convention.
- 3. The Convention entitles the Congo to receive royalties. Under Article 7 of the Convention, the Congo may elect to receive royalties in each or in-kind. As stated in the

Amendment to Lifting Agreement, in 1999, the Congo changed its election to an in-kind election.

- The Convention was executed in the Congo in 1979 and is governed by Congolese law. The oil is extracted from the submerged seabed adjacent to the Congo's coast, in areas within the Congo's exclusive jurisdiction under Congolese and international law. The oil flows through a subsurface pipeline system to a storage vessel in Congolese coastal waters, known as the "Conkouati." A lifting occurs when oil is offloaded from the Conkouati onto a vessel nominated by the buyer of the oil. Garnishees, as working interest owners, take liftings of oil stored on the Conkouati for their own account, and sell 100% of the oil so lifted for their own account.
- 5. CMS Nomeco, as operator, calculates the effect of liftings, on a barrel basis, on the over- or under-lifted position of SNPC and the Congo, and records that effect on an "over/under statement." As described in the Amendment to Lifting Agreement, once the combined under-lifted position of SNPC and the Congo reaches at least 275,000 barrels, SNPC may schedule and take the next lifting of oil for itself and the Congo. When SNPC takes a lifting, SNPC sells, for its own and the Congo's account, all the barrels that it lifts. The SNPC lifting satisfies the Congo's in-kind royalty and puts SNPC into an over-lifted position. Garnishees take liftings until the combined under-lifted position of SNPC and the Congo again exceeds 275,000 barrels, when SNPC may take and sell the next lifting oil for itself and the Congo, again satisfying the Congo's in-kind royalty and again putting SNPC into an over-lifted position.
- 6. By letter dated 22 October 2004, CMS Nomeco gave formal notice to the Congo of court orders and writs issued in U.S. proceedings filed by the Congo's judgment creditors. A

true and correct copy of that letter is attached as Exhibit 1. The Congo's Minister of Hydrocarbons responded by letter dated 4 November 2004, threatening termination of the Convention if the Congo was not allowed to lift its royalty oil. A true and correct copy of that letter, along with an English translation, is attached hereto as Exhibit 2.

The writs of garnishment issued in October and November 2004 only addressed 7. the Congo's royalty and not SNPC's working interest. CMS Nomeco notified the Congo that a lifting of royalty oil would not be permitted, and that in connection with the next government lifting (which was expected to take place in late December 2004), only a partial lifting of SNPC working interest oil would be allowed. Arrangements for tugs and other logistics of the partial lifting were undertaken, but on 23 December 2004, the Court in Houston issued new writs of garnishment directed to the SNPC working interest. I was in Brazzaville, Congo on 28 December 2004 to inform government officials of the decision to not allow any lifting of oil in light of writs of garnishment issued by U.S. courts, including those issued on 23 December 2004. On 28 December 2004, a court sitting in the Congo, upon applications by the Congo and SNPC, entered two orders requiring that CMS Nomeco, as operator of the storage terminal, deliver working interest oil and royalty oil to SNPC. True and correct copies of those orders, with English translations thereof, are attached hereto as Exhibits 3 and 4. The Director General of the Congo's Ministry of Hydrocarbons showed me copies of the Congo court orders and told me that I would be detained until the lifting of oil was completed. I was told that public force would be used if the lifting of oil by SNPC was not allowed to take place. Based on these events, I authorized CMS Nomeco's operations manager to give instructions to permit the lifting of oil. On 28-29 December 2004, SNPC took a lifting of SNPC working interest oil and the Congo's royalty oil. A true and correct copy of a memorandum that I prepared shortly after these events, which accurately describes the events, is attached hereto as Exhibit 5.

- 8. On 3 March 2005, the Congo sent a letter to the United States District Court for the Western District of Texas taking the position that the U.S. courts do not have the authority to transfer the rights of the Congo to dispose of its resources within its own borders. A true and correct copy of the Congo's 3 March 2005 letter, with an English translation, is attached hereto as Exhibit 6.
- 9. Subsequently, CMS Nomeco notified the Congo and SNPC that the next SNPC lifting of the Congo's royalty oil and SNPC's working interest oil would not be allowed in light of U.S. writs and orders. On 4 July 2005, a Congo court in Point Noire, Congo, upon applications filed by the Congo and SNPC, issued orders against CMS Nomeco directing CMS Nomeco to deliver the Congo's royalty oil and SNPC's working interest oil to SNPC. True and correct copies of the July 2005 Congo court orders are attached hereto as Exhibits 7 and 8. Subsequent to the issuance of the July 2005 Congo court orders, and in compliance therewith, CMS Nomeco made arrangements for tugs and other logistics associated with the lifting that the Congo court had ordered, under compulsion of the orders. In early September 2005, SNPC took a lifting of the Congo's royalty oil and SNPC's working interest oil under compulsion of the July 2005 court orders.
- 10. Currently, the combined under-lifted position of the Congo and SNPC is in excess of 275,000 barrels. Under the terms of the Amendment to Lifting Agreement, SNPC has taken the position that it is entitled to take a lifting of oil in the Congo during the period 11-13 April 2006, or shortly thereafter. Under the terms of the Amendment to Lifting Agreement, certain events are required before the Congo and SNPC become entitled to take an oil lifting, and under

the terms of the Amendment to Lifting Agreement, the government lifting was not to take place until sometime in late March or early April 2006, at the earliest. Nonetheless, CMS Nomeco, as operator, sent a letter to SNPC notifying it that in light of the orders and writs issued by U.S. courts, it would not allow SNPC to take the April lifting. A true and correct copy of that letter, along with an English translation thereof, is attached as Exhibit 9. SNPC responded by way of a letter dated 20 March 20 2006. A true and correct copy of SNPC's 20 March 2006 letter, along with an English translation thereof, is attached hereto as Exhibit 10. SNPC's 20 March 2006 letter notified CMS Nomeco that the U.S. writs of garnishment were contrary to the Congo's public policy and international public policy and unenforceable, and it threatened court action in the Congo. By letter dated 24 March 2006, CMS Nomeco notified SNPC that it stood by its position set out in its prior letter. A true and correct copy of CMS Nomeco's 24 March 2006 letter, along with an English translation thereof, is attached hereto as Exhibit 11.

11. On 27 March 2006, I learned that a summons was received by the secretary of CMS Nomeco's finance manager at CMS Nomeco's offices in Point Noire, Congo at approximately 10:45 a.m. that day, for a hearing to take place at 11:00 a.m. that day, on an application by SNPC for an order compelling CMS Nomeco to deliver the April 2006 lifting to SNPC. A true and correct copy of the summons is attached hereto as Exhibit 12. CMS Nomeco was unaware of any application filed by SNPC prior to service of the summons delivered to CMS Nomeco's offices in Point Noire, Congo at approximately 10:45 a.m. on 27 March 2006. CMS Nomeco's finance manager subsequently forwarded to me a copy of the order issued by the Court on the afternoon of 27 March 27 2006, which was served on him late that day. A true and correct copy of that order, with an English translation thereof, is attached hereto as Exhibit 13. I have read the

order, including the language in the order referencing a statement made by CMS Nomeco's "Counsel, Mr Mouyecket." CMS Nomeco did not retain a "Mr Mouyecket" to represent CMS Nomeco in connection with the SNPC application. In connection with the July 2005 court proceedings in the Congo, CMS Nomeco retained Ms. Mouyecket as its counsel to represent it in those proceedings but never contacted or hired her in connection with the March 2006 application. In anticipation that SNPC would seek court relief, CMS Nomeco had retained Mr. Jean Petro, a lawyer in Point Noire, Congo, to represent its interests in connection with any such application. When CMS Nomeco received notice of the hearing on March 27, at the time the summons was delivered at approximately 10:45 a.m. that day, CMS Nomeco attempted to contact Mr. Petro but was unable to reach him. CMS Nomeco never received any communication or information from Ms. Mouyecket concerning the application that was heard by the Congolese court on 27 March 2006, and CMS Nomeco never communicated any information to Ms. Mouyecket or gave her any instructions in connection with the application that was heard by the Congolese court on 27 March 2006. To the contrary, the first notice that CMS Nomeco had of the application was at approximately 10:45 a.m. on 27 March 2006, and CMS Nomeco had no opportunity to retain counsel or to present submissions to the Congolese court in connection with the hearing on that application.

- CMS Nomeco has filed appeals of the December 2004 and July 2005 orders, but those appeals have not yet been heard. CMS Nomeco intends to appeal the order entered by the Congolese court on 27 March 2006.
- . 13. CMS Nomeco has offices in The Republic of Congo, and its employees are all located and work in The Republic of Congo. None of the activities of CMS Nomeco Congo Inc. relating to the operation of the Marine I permit are carried out in the United States. In fact, for

Filed 02/21/2007

more than two years, all of the business activities in which CMS Nomeco engages and has engaged are and have been outside the United States.

- CMS Nomeco is a Delaware limited liability company. CMS Nomeco is owned 100% by Perenco Oil and Gas (International) Company f/k/a CMS Oil and Gas (International) Company. On September 13, 2002, the stock of CMS Oil and Gas (International) Company was sold by CMS Oil and Gas Company (an affiliate of CMS Enterprises Company) to Lankan Inc. (an affiliate of Perenco S.A.). On that same day, the prior directors and officers of CMS Nomeco Congo Inc. resigned, and new directors and officers were appointed. Thereafter, new directors and officers were appointed from time to time. At all times since 12 February 2004, the directors and officers of CMS Nomeco are and have been individuals who reside outside of the United States, consistent with the fact that all of the business activities in which CMS Nomeco engages are outside of the United States. During the period after 12 February 2004 to the present, CMS Nomeco has had no offices, no directors, no officers, no employees, and no business activities in the United States.
- 15. CMS Nomeco does not maintain a registered agent in the State of Texas. The writs of garnishment issued on October 26, 2005 have never been served on any officer of CMS Nomeco.
- . 16. Nuevo Congo is a non-operator working interest owner in the Marine I permit in Congolese waters. None of the activities of Nuevo Congo relating to the Marine I permit are carried out in the United States. In fact, since July 30, 2004, all of the business activities in which Nuevo Congo engages and has engaged are and have been outside the United States.
- 17. Nuevo Congo is a Delaware limited liability company. Nuevo Congo is owned 100% by The Congo Holding Company. On 30 July 30 2004, the stock of The Congo Holding

Company was sold by Nuevo International, Inc. (an affiliate of Plains Exploration & Production Company) to Lankan Inc. (an affiliate of Perenco S.A.). On that same day, the prior directors and officers of Nuevo Congo resigned, and new directors and officers were appointed. The new directors and officers are and at all times since 30 July 2004 have been individuals who reside outside of the United States, consistent with the fact that all of the business activities in which Nuevo Congo engages are outside of the United States. During the period of time from 30 July 2004, to the present, Nuevo Congo has had no offices, no directors, no officers, no employees, and no business activities in the United States.

- 18. Nuevo Congo does not maintain a registered agent in the State of Texas. The writs of garnishment issued on October 26, 2005 have never been served on any officer of Nuevo Congo.
- 19. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing statements are true and correct.

EXECUTED on the 3rd day of April, 2006, in London, United Kingdom.

Maryze Bernard

# EXHIBIT 1

# CMS NOMECO CONGO INC.

B.P. 212 Pointe Noire, République du Congo

22 October 2004

M. Jean-Baptiste TATI LOUTARD Ministre des Hydrocarbures

M. Rigobert Roger ANDELY Ministre de l'Economie, des Finances et du Budget

BP 2120 Brazzaville République du Congo

BP 2083 Brazzaville République du Congo

Monsieur le Ministre des Hydrocarbures, Monsieur le Ministre de l'Economie, des Finances et du Budget,

The purpose of this letter is to inform you of the status of litigation in the United States brought by judgment creditors of The Republic of Congo to garnish royalty under the Convention and tax obligations owed by CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. in connection with the Marine 1 permit.

On September 17, 2004, the United States Court of Appeals for the Fifth Circuit issued a decision holding that royalty under the Convention and tax obligations to the Congo are subject to garnishment by Af-Cap, Inc., a judgment creditor of the Congo. Attorneys for CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd., together with the American lawyers for the Congo, filed petitions for rehearing with the Court of Appeals on October 1, 2004, asking that the September 17, 2004 decision be overturned. On October 13, 2004, the Court of Appeals directed Af-Cap, Inc. to file a response to the rehearing petitions, which it filed on October 18, 2004. The Court of Appeals has not yet rendered a decision on the petitions for rehearing, and those petitions remain pending. However, Af-Cap, Inc. is attempting to implement the decision of the Court of Appeals in the lower court in Austin, seeking issuance of new writs of garnishment. If such writs are issued, the writs will direct that CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. not pay any debt or deliver any property to the Congo pending further order of the Court. The lower court has not yet entered an order on Af-Cap's request for issuance of new writs of garnishment, but stated at a hearing conducted on October 15, 2004 that it intended to grant Af-Cap's request for new writs of garnishment.

Other judgment creditors of the Congo are also seeking to garnish obligations owed by CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. to the Congo, based

on the Court of Appeals' decision in the Af-Cap case. Specifically, FG Hemisphere Associates LLC obtained issuance of writs of garnishment by a district court in Houston, Texas, on October 5, 2004. Subsequently, FG Hemisphere Associates LLC made a filing with the court abandoning the writs to the extent they covered tax obligations, but the writs otherwise remain in effect. The answer to those writs of garnishment is due on October 26, 2004. Additionally, Walker International Holdings, Ltd. has filed a garnishment action against CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. in Austin, Texas. To our knowledge, no writs of garnishment have yet been issued by the court in that case.

Please advise if you have any questions concerning these developments.

Very truly yours,

RODRIGO MARQUEZ

Vice President

cc. M. Nestor Tchissambot-Makosso Directeur Général des Hydrocarbures

# EXHIBIT 2

9-NOU-2004 16:33 DE:FONDS DPT GARANTIES 242 B15246

242 815246

MINISTERE DES HYDROCARBURES

MINISTERE DE L'ECONOMIE, DES FINANCES ET DU BUDGET

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P:2/2

REPUBLIQUE DU CONGO Unité - Travall - Progrès

Brazzaville, le 4 novembre 2004

Les Ministres.

A

CMS Nomeco Congo

Pointc-Noirc

Par porteur

Messieurs.

Nous accusons réception de votre lettre du 22 Octobre 2004 par laquelle vous nous informez du jugement rendu le 17 septembre 2004 par la United States Court of Appeals for the Fifth Circuit ainsi que des actions judiciaires engagées par des créanciers de la République du Congo dans l'Etat du Texas.

Nous souhaitons, par la présente, vous rappeler les obligations de livraison de la redevance souscrites par les associés du permis Marine 1 aux tennes de la Convention susvisée. La non-livraison de la redevance en nature par un associé constituerait un manquement majeur à une obligation contractuelle essentielle qui conduirait à une résiliation immédiate de la Convention aux torts et griefs de l'associé défaillant.

Compte tenu de ce qui précède, nous souhaitons que vous nous confirmiez par écrit le 12 novembre 2004 au plus tard que CMS Nomeco Congo se conformera strictement en toutes circonstances à ses obligations de livraison de la redevance minière en application des termes de la Convention, ainsi que de paiement de toute autre imposition exigible en République du Congo.

Veuillez adresser toute correspondance aux soussignés qui sont les seuls représentants autorisés de la République du Congo concernant ce dossier.

Veuillez agréer, Messieurs, l'expression de notre considération distinguée.

Lo-Ministre des Hydrocarbures

edia Baphasia Tati-Loutard

Rigolog Rog

et du Budget,

Roger Andoly

Le Ministre de l'Economie et de Finances,

AT FRIDIO!



# **Communication Alliance**

1880 S. Dairy Ashford, # 215 Houston, Texas 77077

Tet. 281-920-4802 Fax: 281-920-4803 Email: CommAll@aol.com

# Affidavit of Accuracy

This is to certify that to the best of my knowledge and ability, the attached translation is an accurate, true and complete rendition into English of a letter from the Ministry of Hydrocarbons of the Republic of the Congo

written in French and pertaining to Perenco LLC

Michèle Tropée

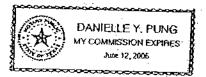
Professional English/French Translator

ATA Accredited

Sworn to and subscribed before me on this 10th day of November 2004.

Notary Public - State of Texas

Somethe!



### MINISTRY OF HYDROCARBONS

MINISTRY OF THE ECONOMY, FINANCE AND THE BUDGET

No. 04x11072/MHC-CAB

REPUBLIC OF THE CONGO UNITY – WORK – PROGRESS

Brazzaville, November 4, 2004

The Ministers,

To: CMS Nomeco Congo Pointe-Noire

By courier

#### Gentlemen:

We acknowledge receipt of your letter dated October 22, 2004 in which you informed us of the decision handed down on September 17, 2004 by the United States Court of Appeals for the Fifth Circuit as well as the legal actions filed by the creditors of the Republic of the Congo in the State of Texas:

We hereby wish to remind you of the obligations to deliver royalties incumbent on the Marine 1 permit associates in accordance with the above-mentioned agreement. Non-delivery of royalties in kind by an associate would constitute gross breach of a basic contractual obligation that would entail immediate termination of the agreement, entitling the injured party to sue the defaulting associate.

Taking the foregoing into account, we hope that you will confirm in writing by November 12, 2004 at the latest that CMS Nomeco Congo will strictly comply with its mining royalty delivery obligations under all circumstances, in application of the terms of the Agreement, as well as payment obligations for any other tax due in the Republic of the Congo.

Please address all correspondence to the undersigned, who are the sole authorized representatives of the Republic of the Congo with respect to this matter.

Sincerely,

Minister of Hydrocarbons

Minister of the Economy, Finance and the Budget

[signature]
[seal of the Ministry of Hydrocarbons]
Jean-Baptiste Tati-Loutard

[signature]
[seal of the Ministry of Economy, Finance and Budget]
Rigobert Roger Andely

# EXHIBIT 3

REPORTOIRS Nº 1131 / DU 28 P.C. BR. 2004.-

# AU NOM DU PEUPLE CONGOLAIS

R'DONNANCE

#### APFAIRE

REPUBLIQUE DU CORGO , MINISTERS DES HYDROCARRURES, Pérgritement du KOUILOU (Me MISSIE)

CONTRE:

C M S NOMECO INCOCONGO

OBJET : REFERE D'HEURE A HEURE

L'AN DEUX MIL QUATRE ;

ET, LE VINCT HUIT DU MOIS DE DECEMBRE :

PAR DEVANT NOUS, Norbert ELENGA, Président du cue des référés en notre Cabinet sis au Palais de Justice de cette ville;

A COMPARU

Le République du Congo, Ministère des Hydrocerbures agissant eux dilligences demon représentant légal;

Qu'elle s'été saisie par les créanciers américain corgaison de 550.000 barila de pétrole, refuse de s'exécuter au motif que cette cargaison fait l'objet d'une saisie auivant la décipossible la saisie attributibe de la dite cargaison;

Or une décision de justice rendue per une juridic de son immunité de juridiction et d'exéction ne peut pas s'exécuter de plein droit en territoire étranger qu'elle doit, pour recevoir exécution, être soumise à la procédure d'exéquaturée telle que préministrative et financière selon lequel : "Seuf conventions diplomatiques contraires, les jugements rendus per les tribuneux étrangers et les ectes par les officiers publics ou ministériels étrangers ne sont susceptibles d'exécution sur le territoire congolais leis qui aurais été compétente "ratione metériae" pour en counai-

Ou'en l'espèce et sans qu'il soit nécessaire de débattre du bien fondé ou on de l'action en saisie des créanciers laquelle se fonde la société NOMSCO n'a Jamais été exéquaturée et pire, les tribusaux congolais ne sont pas encore saisis d'une demande en ce sens ;

Ou'il concient donc, la question de l'enlèvement de certain, d'ordonner sur minute que la NOTECO livre à tout opérateur que lui désigners la SNPC ladite cargaison;



# SUR PUOI, NOUS JUGE DES R PERES

Attendu qu'il resulte de l'examen des pièces du dossier que la société MOVECC a fait application d'un jugement américain rendu dans l'Etat du Texas en date du 17 Septembre 2004 à l'encontre de l'Etat Congoleis;

par les juridictions congolaises;

cue dans ces conditions, ledit jugement ne satisfait aux dispositions légales notamment l'article 200 du code de procédure civile, commerciale, administrative et financière Congolais qui dispose que "sauf conventions diplomatiques contraires, les jugements rendus par les Tribunaux étrangers et les actes reçus par les officiers publics ou ministériels étrangers ne sont susceptibles d'exécution sur le territoire congolais qu'après avoir été déclarés exécutoires par une juridiction congolaise qui aurait compétante "ratione materiae" pour en connaître;

Attendu des lors que la requête de l'Etat Congolals est donc regulière et recevable en outre de l'article 207 du code de l'rocédure civile, commerciale, administrative et financière;

Attendu au fond qu'elle est fondée

qu'il y a lieu d'y faire droit ;

Same delais à tout opérateur que lui designera la SNPC toutes des vertu de leur contrat de partenariet;

Attendu que la société NOMECO regulièrement convoqués a comparu par le biais du représentant du Directeur Général, Monsieur Benoît DJ LA FOUCHARDIERE, Directeur des opérations;

Qu'il y a lieu de lui donner acte ;

Attendu que la société NOMECO a succombé su procès ;

formament à l'article 57 du dode de procédure civile, commerciale administrative et financière;

# PAR CES MOTIFS

Statuant publiquement, contradictoirement, en référé

# AU PRINCIPAL

Renvoyona les parties à mieux se pourvoir ainsi qu'

# MAIS DES A PRESENT, VU L'URGENCE ET PAR PROVISION

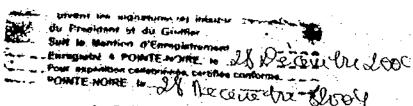
Constatons que le jugement du 17 Septembre 2004 n'est pas été encore exéquaturé par les juridictions congolaises;

Constatons que ledit jugement n'a jamais été signi-

contrat de partenariat ;

Ordonnons l'exécution provisoire de la présente ordinance nonobstent toutes voies de recours ;

Mettons les dénens à la charge de la Société RCFGCO St, evens signé notre Ordonnance sec le Greffier./-



3 - Graffier on Chef

Me R. KOUD-OKOTO Graffier on Chaf

AF H Tribunil

# Certification of Translation

ATA Certified Steven Sachs

This is to certify that the following document:

Court Order in the matter of Republic of the Congo v. CMS NOMECO INC. CONED

is an accurate and que translation prejinted by the understened from French into Enterior. am a translator certified by the American Translators Association for translation from French

Steven Sachs 1312 Harbor Road Annapolis MD 21409.

b mail: steven@stefensachs.com Ph. (301) 261-1016

Pax: (509) 461-9020

Subscribed and sworn betweene on this 10 day of Javaney of 2005

MY COMPLISSION EXPIRES: 4/8/2008

## EXECUTION COPY

### REPUBLIC OF THE CONGO ON BEHALF OF THE CONGOLESE PEOPLE

REGISTER No. 1131/ OF DECEMBER 28, 2004

ORDER

IN THE MATTER OF:

THE REPUBLIC OF THE CONGO

MINISTRY OF HYDROCARBONS, Department of Kouilou (Mr. Messie, Attorney)

VERSUS:

CMS NOMECO INC. CONGO

SUBJECT: IMMEDIATE SUMMONS

**Istamp: EXECUTION COPY** Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28]

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law B.P. [Tel. 94 83 28] [signature]

# IN THE YEAR TWO THOUSAND AND FOUR:

# AND ON THE TWENTY-EIGHTH DAY OF THE MONTH OF DECEMBER;

BEFORE US, Norbert Elanga, Presiding Judge of the Pointe-Noire Court of First Instance, holding an urgent public hearing in our Chambers in the Courthouse of said city;

# THE FOLLOWING APPEARED

The Republic of the Congo, Ministry of Hydrocarbons, filing through its legal representative;

Whereas it has been gamished by the American obligees of the Congolese State, NOMECO, which was to deliver to it a cargo of 550,000 barrels of oil, and refuses to do so on the grounds that said cargo has been garnished based on the decision of the Court of the State of Texas of September 17, 2004, making possible the garnishment of said cargo;

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature]

[illegible signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

Yet a court decision handed down by a foreign jurisdiction, even when the obligor renounced its immunity from jurisdiction and execution, cannot be automatically executed abroad and that, to be executed, it is necessarily subject to an execution procedure as stipulated by Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure, according to which: "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

That in this case and with no necessity of debating the merits or the lack thereof of the action to garnish by the U.S. obligees, there is reason to find that the decision that NOMECO is using as a basis has never been executed. Worse, the Congolese courts have not yet received an application for authority to enforce this judgment;

That therefore, the matter of removing the cargo in the possession of NOMECO is urgent and entails a certain peril, so that it should be made enforceable immediately that NOMECO delivers said cargo to any operator that the SNPC [Société nationale des pétroles du Congo - Congo National Petroleum Company] may designate;

# BASED UPON WHICH, WE, THE JUDGE FOR URGENT MATTERS

Whereas the examination of the exhibits in the file shows that NOMECO has applied a U.S. judgment handed down in the State of Texas on September 17, 2004 against the Congolese State;

Whereas said judgment has never been executed by the Congolese jurisdictions;

That under these conditions, said judgment does not satisfy the statutory provisions of Article 299 in particular of the Congolese Code of Civil, Commercial, Administrative and Financial Procedure, which stipulates that "unless there are diplomatic conventions that stipulate otherwise, the judgments handed down by foreign courts and instruments received by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that was given ratione materiae jurisdiction to take cognizance of the matter;

Whereas since the application of the Congolese State is thus in order and admissible under Article 207 of the Code of Civil, Commercial, Administrative and Financial Procedure;

Whereas it has merit in terms of the substance;

762-SLR

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature]

[illegible signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

That there is reason to accept it;

That NOMECO is ordered to deliver without delay to any operator that the SNPC designates all quantities of hydrocarbons that belong to it and that are in NOMECO's possession pursuant to their partnership contract;

Whereas NOMECO, duly convened, has appeared through the representative of the Director General, Mr. Benoît de la Fouchardière, Operations Manager;

It is to be officially recorded;

Whereas NOMECO has lost the case;

That there is reason to hold NOMECO responsible for the costs in accordance with Article 57 of the Code of Civil, Commercial, Administrative and Financial Procedure;

#### **NOW THEREFORE**

Ruling in public based on the arguments of both parties on an urgent basis in a civil matter in the first instance;

#### ON THE MERITS

We refer the parties to enter an appeal as they shall advise;

# BUT AT THIS TIME, GIVEN THE URGENCY AND BY WAY OF ADVANCE

We find that the judgment of September 17, 2004 No. has not yet been confirmed by the Congolese jurisdictions;

We find that said judgment has never been served upon the Congolese State;

### CONSEQUENTLY;

We order NOMECO to deliver without delay to any operator that the SNPC designates all quantities of hydrocarbons that belong to it and in NOMECO's possession pursuant to their partnership contract;

We order the immediate execution of this order notwithstanding any appeals;

The costs shall be paid by NOMECO.

Filed 02/21/2007

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature]

[illegible signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

And, we have signed this Order with the Registrar. The signatures of the Presiding Judge and the Registrar follow. The recording follows. Recorded in Pointe-Noire on December 28, 2004 Certified true execution copy, checked against the original Pointe-Noire, December 28, 2004 Chief Registrar

In consequence thereof: the Republic of the Congo orders its registrars, based upon this application, to execute said judgment with the Attorneys General and Prosecuting Attorneys of the Appeals Courts and Courts of First Instance to assist all commanders and law enforcement agencies to lend a hand when they are required by law to do so.

In witness whereof, this execution copy has been signed and sealed by the Head Registrar of the Pointe-Noire Court of First Instance and delivered by him in the form of an execution copy.

[signed]

By the Court Document Checked against the Original The Head Registrar

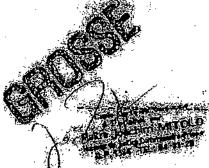
R. Kond-Okono, Attorney Head Registrar

# EXHIBIT 4

CIVIL. Nº 1212

# C 1212 REPUBLIQUE DU CONGO

/ AU NOM DU PEUPLE CONGOLAIS



6. N. P. O SOCIETE HOMECO D'USIDET A HEURE.

THE OFFICE A

er, le vince mure di hois

PAR DEFART MOUS, Nordech ELLNGA, Président du Tribunel de drende Instance de Pelnie Moire, fance dudient publique des référés en notre Cabinat dis ou Palois de Japine de cette ville i

Agolisto de l'instre dadno ine l'esper assonso cer Lier Frincipal :

### voue a no

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de débattre du blen fondé ou on de l'action an solete des cross-clers d'origine Américaine, il y a liquide relever que la dési-sion que l'aquelle se fonde la sacdeté montre p'a jameis été ave-custurée et, pire, le tribunum consolels ne cont pas éncois set sis d'uns demande en ce sens :

cu'il convient donc, la question de Remièves ment de la cargeison détance per NONECO étant argente et composan un péril certain, d'ordonner par minute que le société NOMECO livre à tout opérateur que lui designere la S.N.P.O ladité cargais son ;

-34

### SUR AUCT, NOVA 1006 DES REFERES

Attendo po'il reculto de l'exemen des pières du dossier que la sociato CIS Novecto a feit application du jurement américain à l'encontés de la sociaté spectional en date du 25 Docembre 2009

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# PAR CIS NOTERE

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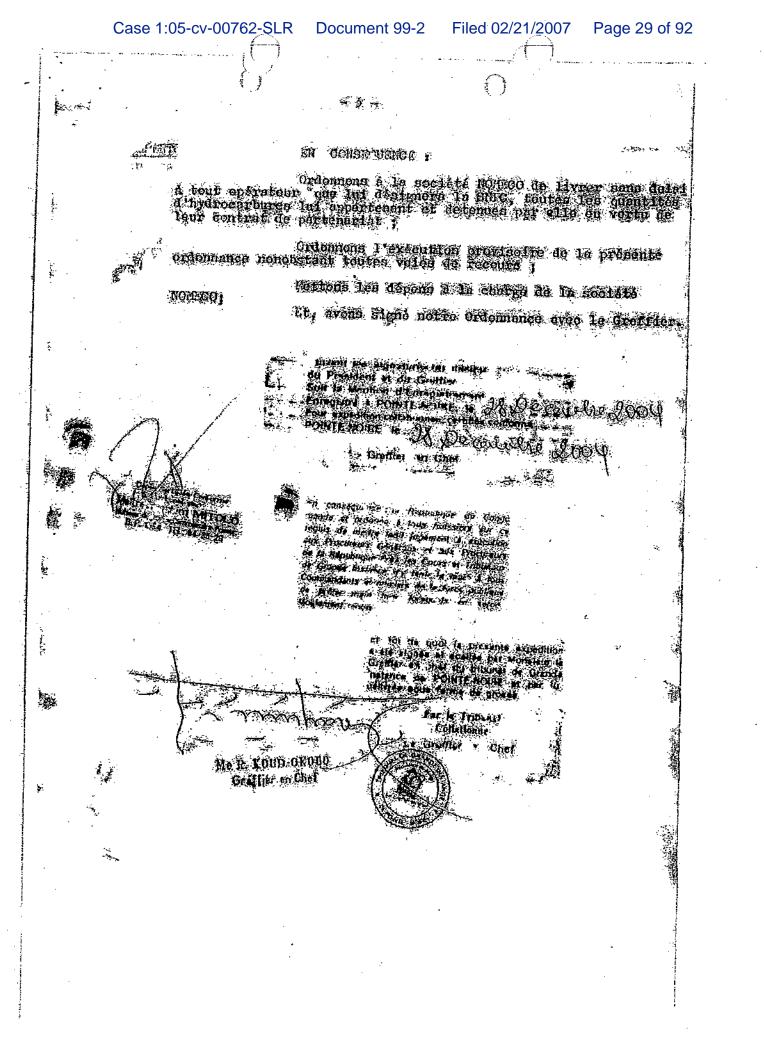
# AU PRINCIAPL

魕

elles en avisacent les parties à sieux se pourvoir élast qu'

6A18 DJS 4 18: MMT. VILLUBURUS, BY PAR PROVISION
Constatons que le juzzaent méricain du 23 Décembre
Constatons que ledit jugement n'e pas été signifié
3 le société SNFC

Em Paris



# Certification of Translation

ATA Certified : Steven Sachs

This is to certify that the following document:

Court Order in the printer of SNPC V NOMECO

il an accurate and true translation prepared by the undersigned from Prench into English and translator certified by the American Thurslathes Association for manslation from Igench into English

11 (0) Steven Sachs 1312 Hanton Road Anaapolis MD 21403

Date Date

o mail; sievendstreppichs com Ph: 1901) 261 : 1016 Pax: (519) 461 - 000

Subscribed and swim before mounthis 10th day of January of 2005

HOTARY PORTOR

Direction is solven in 19/19/2008

## **EXECUTION COPY**

F. 204

C 1212

# REPUBLIC OF THE CONGO ON BEHALF OF THE CONGOLESE PEOPLE

REGISTER No. 1212 / OF DECEMBER 28, 2004

ORDER

IN THE MATTER OF: SNPC

**VERSUS: NOMECO** 

SUBJECT: IMMEDIATE SUMMONS

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law

B.P. 1384 [Tel. 94 83 28]

[signature]

### IN THE YEAR TWO THOUSAND AND FOUR:

# AND ON THE TWENTY-EIGHTH DAY OF THE MONTH OF DECEMBER;

BEFORE US, Norbert Elanga, Presiding Judge of the Pointe-Noire Court of First Instance, holding an urgent public hearing in our Chambers in the Courthouse of said city;

Assisted by Cathérine Kedet Issongo, Head Registrar;

#### THE FOLLOWING APPEARED

Société Nationale des Pétroles du Congo, (acronym: SNPC), a government-owned industrial and commercial enterprise, with headquarters at B.P. 88, Brazzaville, filing through it legal representative;

The SNPC has been garnished by the American obligees of the Congolese State, NOMECO, which was to deliver to it a cargo of 550,000 barrels of oil, and refuses to do so on the grounds that said cargo has been garnished based on the decision of the Court of the State of Texas of December 23, 2004, making possible the garnishment of said cargo;

Yet a court decision handed down by a foreign jurisdiction, even when the obligor renounced its immunity from jurisdiction and execution, cannot be automatically executed abroad and that, to be executed, it is necessarily subject to an execution procedure as stipulated by Article 299 of the Code of Civil, Commercial, Administrative

[stamp: EXECUTION COPY Certified True Copy

[illegible signature]

Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

and Financial Procedure, according to which: "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

That in this case and with no necessity of debating the merits or the lack thereof of the action to seize by the U.S. obligees, there is reason to find that the decision that NOMECO is using as a basis has never been executed. Worse, the Congolese courts have not yet received an application for authority to enforce this judgment;

Therefore, the matter of removing the cargo in the possession of NOMECO is urgent and entails a certain peril, so that it should be made enforceable immediately that NOMECO deliver said cargo to any operator that the SNPC [Société nationale des pétroles du Congo - Congo National Pétroleum Company] may designate;

# BASED UPON WHICH, WE, THE JUDGE FOR URGENT MATTERS

Whereas the examination of the exhibits in the file shows that NOMECO has applied a U.S. judgment handed down in the State of Texas on December 23, 2004 against the SNPC;

Whereas said judgment has never been executed by the Congolese jurisdictions;

That under these conditions, said judgment does not satisfy the statutory provisions of Article 299 in particular of the Congolese Code of Civil, Commercial, Administrative and Financial Procedure, which stipulates that "unless there are diplomatic conventions to the contrary, the judgments handed down by foreign courts and instruments received by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that was given ratione materiae jurisdiction to take cognizance of the matter.

Whereas, said judgment has never been notified to the SNPC;

Whereas since the application of the SNPC is thus in order and admissible under Article 207 of the Code of Civil, Commercial, Administrative and Financial Procedure;

Whereas it has merit in terms of the substance;

That there is reason to accept it;

Filed 02/21/2007

Istamp: EXECUTION COPY Certified True Copy

[illegible signature]

Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

That NOMECO is ordered to deliver without delay to any operator that the SNPC designates all quantities of hydrocarbons that belong to it and that are in NOMECO's possession pursuant to their partnership contract;

Whereas NOMECO, duly convened, has appeared through the representative of the Director General, Mr. Benoît de la Fouchardière, Operations Manager;

It is to be officially recorded;

Whereas NOMECO has lost the case;

That there is reason to hold NOMECO responsible for the costs in accordance with Article 57 of the Code of Civil, Commercial, Administrative and Financial Procedure;

#### **NOW THEREFORE**

Ruling in public based on the arguments of both parties on an urgent basis in a civil matter in the first instance:

We refer the parties to enter an appeal as they shall advise;

# BUT AT THIS TIME, GIVEN THE URGENCY AND BY WAY OF ADVANCE

We find that the judgment of December 23, 2004 has not yet been confirmed by the Congolese jurisdictions;

We find that said judgment has never been served upon the SNPC;

#### CONSEQUENTLY;

We order NOMECO to deliver without delay to any operator that the SNPC designates all quantities of hydrocarbons that belong to it and in NOMECO's possession pursuant to their partnership contract;

We order the immediate execution of this order notwithstanding any appeals;

The costs shall be paid by NOMECO.

And, we have signed this Order with the Registrar.



Filed 02/21/2007

[stamp: EXECUTION COPY Certified True Copy Joachim Mitolo, Attorney at Law B.P. 1384 [Tel. 94 83 28] [signature] [illegible signature]

[seal: POINTE-NOIRE COURT OF FIRST INSTANCE]

The signatures of the Presiding Judge and the Registrar follow. The recording follows. Recorded in Pointe-Noire on December 28, 2004 Certified true execution copy, checked against the original Pointe-Noire, December 28, 2004 Chief Registrar

In consequence thereof: the Republic of the Congo orders its registrars, based upon this application, to execute said judgment with the Attorneys General and Prosecuting Attorneys of the Appeals Courts and Courts of First Instance to assist all commanders and law enforcement agencies to lend a hand when they are required by law to do so.

In witness whereof, this execution copy has been signed and sealed by the Head Registrar of the Pointe-Noire Court of First Instance and delivered by him in the form of an execution copy.

[signed]

By the Court Document Checked against the Original The Head Registrar

R. Koud-Okono, Attorney Head Registrar

# EXHIBIT 5

Filed 02/21/2007

Received 04/08/2005 10:16AM in 05:44 on Line [5] for GL0607 \* Pg 2/12 8. AVR. 2005 16:15 PERENCO

#### 27 Décembre :

- Arrivée à Brazzaville l'avlon a une heure de retard
- J'ai rendez-vous avec B Itoua , Président de la SNPC , à 21 heures en principe. B Itoua est en Conseil d'Administration. On ne sait quand il sortira. Finalement, à 23h30 C Oba et S Poaty arrivent à l'hôtel. On commence la réunion. Apparemment, ils ne sont pas informés du dernier jugement US concernant la SNPC. Ils font copie du jugement. B Itoua arrive à 23h45
- B !toua paraît catastrophé quand il apprend la décision du Tribunal Américain concernant la SNPC. Je lui confirme que j'ai donné instruction au terminal de ne pas charger.
- Entre temps, j'ai confirmé les réunions avec N Tchissambot, Directeur Général des Hydrocarbures, à 10h et le Ministre à 11h.

#### 28 Décembre :

- 11 h : Je fais un point avec N Tchissambot (il n'était pas au courant du jugement concernant la SNPC) et fais des copies pour le Ministre et lui, Je l'informe de ma réunion avec B Itoua la veille. Il était au courant car S Poaty l'avait appelé. Pour lui, pas d'autre solution que charger : au besoin l'Etat enverra une vedette avec des militaires pour forcer le terminal à charger . Il va informer le ministre de la situation pendant que j'attends dans l'antichambre, Benoît m'a informée, entre temps, qu'il y a un problème technique sur le remorqueur.
- Meeting avec le Ministre : Présents : M Tati Loutard, M Delica, M Sokath (Conseller), N Tchissambot, + JM Runacher/M Bernard, JM Runacher présente Maryse Bernard , Présidente de CMS Nomeco Congo INC. Le Ministre confirme sa lettre du 21 décembre 2004 et menace de retirer les droits si CMS Nomeco Congo Inc. refuse de charger. Je lui explique que malheureusement je ne peux pas faire autrement. N Tchissambot évoque à nouveau la possibilité d'une action militaire pour contraîndre le terminal à charger. Le Ministre pose ensuite quelques questions sur la production actuelle, les investissements.

8. AVR. 2005 16:15 PERENCO 10:16AM in 05:44 on Line-151 for GL0607

Benoît appelle vers 13 h. C Oba et S Poaty et un envoyé du Tribunal sont dans son bureau et veulent lui signifier une notification comme quoi il est convoqué au Tribunal de Grande Instance de Pointe Noire. Il m' apprend que le problème du treuil du remorqueur est réglé. Je lui dit d'aller au tribunal puisqu'il est convoqué et ordre de ne pas charger le bateau.

Filed 02/21/2007

- Dans l'après-midi, nombreux AR téléphoniques avec Benoît et R Marquez. Les jugements, semble-t-il, vont être prononcés, obligeant CMS Nomeco Congo Inc. à laisser charger.
- Vers 18h15, les jugements sont faxés à l'hôtel. N Tchissambot vient à l'hôtel accompagné d'un policier en uniforme et me convie à la réception en me montrant le jugement. Il m'intime l'ordre de charger. Je lui demande ce qui se passerait si je ne m'exécute pas : il répond en sourlant que je serai l'hôte de la République jusqu'à ce que le bateau soit chargé.
- Je décide alors (18h45) de donner l'ordre de charger à Benoît et je rédige un résumé de la situation que l'essaye de faxer à R Marquez, copie R Fox. Après beaucoup d'efforts et de pages blanches car les Congolais mettaient les feuillès à l'envers, le fax passe.

Received 04/08/2005 10:16AM in 05:44 on line [5] for GLO607 \* Pg 4/12 8. AVR. 2005 16:15 PERENCO Nº 096 P. 4

#### **ENGLISH TRANSLATION**

#### 27 December:

- Arrival in Brazzaville The plane is an hour late.
- I have an appointment with B. Itoua, the President of the SNPC, at 9 PM. B Itoua attends a Board meeting. No one knows when it will end. Finally, at 11:30 PM C. Oba and S. Poaty arrive at the hotel. The meeting begins. Apparently they have not been informed of the latest U.S. judgement regarding the SNPC. They make a copy of the judgement. B. Itoua arrives at 23:45 PM.
- B. Itous seems to be stunned when he hears about the decision of the American Court regarding the SNPC. I confirm to him that I have instructed the terminal not to load.
- Meanwhile, I have been able to confirm meetings with N. Tchissambot, General Director of Hydrocarbons, at 10:00 AM and the Minister at 11:00 AM.

#### 28 December:

- 11:00 AM: Review of the situation with N. Tchissambot (he was not aware of the decision regarding the SNPC) and copies the decision for the Minister as well as for himself. I inform him of my meeting with B. Itoua the day before. He was aiready informed since S. Poaty had called him. He sees no other solution than to proceed with the loading: If necessary the state will send a military vessel to force the terminal to load. He will inform the minister of the situation while I wait in his antechamber. Meanwhile, Benoit has informed me that there is a technical problem with the tug boat.
- Meeting with the Minister: Mr. Tati Loutard, Mr. Delica, Mr. Sokath (advisor), N. Tchissambot + J.-M. Runacher/M. Bernard. M. Runacher introduces Maryse Bernard, president of CMS Nomeco Congo INC. The minister confirms his letter dated 21 December 2004 and threatens to withdraw the rights if CMS Nomeco Congo Inc. refuses to load. I explain to him that I unfortunately cannot do otherwise. N. Tchissambot again mentions the possibility of a military action to force the terminal to load. The minister subsequently asks questions regarding the current production and investments.
- Benoit calls around 1:00 PM. C. Oba and S. Poaty as well as a person sent by the court are in his office to notify him of his summon to appear at the Points Noire District Court. He informs me that the problem relating to the winch of the tug boat is solved. I tell him that he should go to court since he has been summoned and order him not to load the boat.
- During the afternoon, a large number of telephone conversations with Benoit and R.
   Marquez. Apparently judgements will be rendered obliging CMS Nomeco Congo Inc. to let the loading take place.
- Around 18:15 PM the judgements are faxed to the hotel. N. Tohissambot comes to the hotel accompanied by a uniformed police officer and asks me to come to the reception desk while showing me the judgement. He orders me to load the yessel. I ask him what would happen if I don't follow his order: Smiling, he answers that in such case I will be the guest of the Republic until the vessel has been loaded.

Received 04/08/2005 10:16AM in 05:44 on line (5) for GL0607 \* Pg 5/12 8. AVR. 2005 16:16 PERENCO Nº 096

I then decide (18:45 PM) to give Benoit the order to load and prepare a summary of the situation which I try to fax to R. Marquez with a copy to R. Fox. After quite some efforts and white pages (the Congolese put the paper into the fax machine the wrong way) the fax is successfully sent.

(signature illegible)

06/01/2005

# EXHIBIT 6



### **Global Language Services**

Translations - Interpreting DTP - Localization

KERN Corporation The Helmsley Building 230 Park Avenue, Suite 1517 New York, NY 10169

Tel. (212) 953 2070 Fax (212) 953 2073 kern.ny@komtranslations.com

Kem Corporation
The Heimstey Building
30 Park Avenue, Suite 1617
New York, NY 10169

New York

County of:

State of:

New York

SS.:

www.e-kern.com

## CERTIFICATE OF ACCURACY

IT IS HEREBY CERTIFIED, that KERN Corporation, a corporation organized and existing under the laws of the State of New York, is professionally engaged in the rendering of foreign language translation services; that it has translated the following document(s)

### LETTER DATED MARCH 3, 2005 REGARDING AF-CAP, INC. V. REPUBLIC OF CONGO

from the FRENCH language into the ENGLISH language and that the said translation is a true and correct rendering of the said document to the best of our knowledge and belief.

Signed by:

Subscribed to before me this

2005

TJOY N. WILTERMUTH

NOTARY PUBLIC, State of New York No. 01WI - 6093589

Qualified in New York County
My Commission Expires June 2, 2007

San Francisco: The Russ Building - 235 Montgomery Street, Suite 846 - San Francisco, CA 94104 Tel. (415) 433 5376 - Fex (415) 433 5377 - kern.et@kerntranslations.com

# MINISTER OF FOREIGN AFFAIRES AND FRANCOPHONY

REPUBLIC OF CONGO Unité - Travail - Progrès

CABINET

MAEF 0744 CAB.SP.

Brazzaville, 03 March 2005

MINISTER OF STATE

Re: Republic of Congo v. Af-Cap, Inc.

Dear Judge:

I refer to the order issued by this court on 22 February 2005 (the "Turnover Order"), which provides, inter alia:

- "The Court hereby takes possession and control of all future royalty obligations owed to the Congo under the Convention [for the production of oil and gas in the Congo dated May 25, 1979] and this Order shall constitute a judgment lien upon the Congo's property interests in, and its rights to receive payment of, its royalty share" from oil companies operating in the Congo under a concession granted by the Congo in the Convention;
- "The Court further orders the Congo to turn over such royalty payments into the registry of the Court and to execute . . . [a] letter of instruction . . . to the parties who pay royalties under the Convention to the Congo revoking prior instructions regarding payment of the royalty . . . ."

This suit was initiated over four years ago with a view to persuading United States courts to authorize seizure of the Congo's rights to mining royalties, which it collects within its own territory, in satisfaction of a debt purchased by a creditor without any right to said mining royalties. The Congo has strongly objected to this litigation, which is unfounded. It is premised on the erroneous notion that an American court may transfer the right of a sovereign nation—the Republic of Congo—to dispose of its resources within its own borders. The Republic of Congo has thus far endeavored to cooperate with United States judicial authorities in the hope that United States courts would recognize their obligation to respect the Congo's sovereignty, as is mandated not only under Congolese and international law, but under United States law as well.

In light of the judgments of this Court and the Court of Appeals for the Fifth Circuit, the Congo is constrained to protest in the strongest possible terms the failure to

Filed 02/21/2007

respect its sovereign rights and the resulting judicial measures that purport to dispossess the Congo of economic rights comprising its national patrimony and principal source of export revenue. It is an established principle of the law of nations that every state exercises full and permanent sovereignty over its natural resources and exclusive authority to control the economic exploitation thereof. The Congo's rights to the mining royalties within its territory are subject to its exclusive jurisdiction and sovereignty, which cannot be subordinated to the judicial measures of another state.

The Turnover Order issued by this Court is a clear violation by the United States of international law which recognizes the right for any sovereign State to exercise authority and control over its natural resources within its national territory. Such actions impact negatively on the relations between the United States and the Congo, undermining the concerted mutual efforts of both nations to encourage private United States entities to invest in the Congo, in particular in the oil sector. This unfortunate development requires the Congo to reassess its relations with the United States, particularly where other sources of trade and investment such as Canada, Europe, India and China continue to respect the sovereignty of the countries with which they maintain an economic relationship.

The Turnover Order is unenforceable in the Congo, and cannot supersede the Congo's sovereign authority to prescribe and enforce its own laws within its own territory. Regretfully, the Congo must hereby advise the Court that, for the reasons stated, the Congo will not implement the Turnover Order.

Please accept, Your Honor, the expression of my most distinguished consideration.

> [seal: Minister of Foreign Affaires and Francophony Cabinet Republic of Congol

[signature].

Rodolphe Adada

Hon. Sam Sparks United States District Judge United States District Court for The Western District of Texas Austin, Texas.

U.S.A.

copy. Hon. William H. Taft, IV · United States Department of State

### MINISTERE DES AFFAIRES ETRANGERES ET DE LA FRANCOPHONIE

CABINET

MAEF 0 7 4 4 CAB.SP.

République du Congo Unité - Travail - Progrès

Brazzaville, le 03 MARS 2005

LE MINISTRE D'ETAT,

Objet : République du Congo c. Af-Cap.Inc

Monsieur le Juge,

Je me réfère à l'Ordonnance de votre tribunal rendue le 22 février 2005 (the « Turnover Order », qui décide notamment :

- The Court hereby takes possession and control of all future royalty obligations owed to the Congo under the Convention [for the production of oil and gas in the Congo dated May 25, 1979] and this Order shall constitute a judgment lien upon the Congo's property interests in, and its rights to receive payment of, its royalty share" from oil companies operating in the Congo under a concession granted by the Congo in the Convention;
- "The Court further orders the Congo to turn over such royalty payments into the registry of the Court and to execute...[a] letter of instruction ...to the parties who pay royalties under the Convention to the Congo revoking prior instructions regarding payment of the royalty...

Cette procédure a été initiée par les demandeurs il y a plus de quatre ans dans le but de convaincre les tribunaux américains d'autoriser la saisie des droits du Congo sur la redevance minière qu'elle perçoit sur son propre territoire, en paiement de droits d'un créancier au titre d'une dette du Congo sans rapport avec un droit quelconque sur cette redevance minière. Le Congo a vigoureusement contesté cette action judiciaire, laquelle est sans aucun fondement. Elle repose sur l'hypothèse erronée qu'un tribunal américain pourrait alièner le droit d'un Etat souverain, la République du Congo, de disposer de ses ressources à l'intérieur de son propre territoire. La République du Congo a jusqu'à présent coopéré avec les autorités judiciaires américaines dans l'espoir que les tribunaux américains admettraient leur obligation de respecter la souveraineté du Congo, comme le leur impose le droit international, le droit congolais ainsi que le droit des Etats-Unis d'Amérique.

. Compte tenu des jugements rendus par votre tribunal et par la Court of Appeals to for the Fifth Circuit, le Congo se voit contraint de protester vigoureusement contre हैं हैं हैं non-respect de ses droits souverains et contre les mesures judicialres qui visent à le déposséder de droits économiques qui font partie de son patrimoine national et qui constituent sa principale source de revenus à l'exportation. Le droit international public établit clairement le principe selon lequel chaque Etat a le droit d'exercer une souveraineté entière et permanente sur ses ressources naturelles, et dispose du droit exclusif d'en contrôler l'utilisation économique. Les droits du Côngo sur la redevance minière à l'intérieur de son territoire sont du ressort de sa souveraineté exclusive, laquelle ne peut en aucun cas faire l'objet de mesures judiciaires de la part d'un autre Etat.

Le Turnover Order émis par votre tribunal constitue une violation patente de la part des États-Unis du droit international, lequel consacre le droit pour chaque Etat souverain de gérer ses ressources naturelles à l'intérieur de son territoire national. De telles actions affectent négativement les relations entre les Etats-Unis et le Congo et les efforts mutuels de ces deux nations pour encourager les sociétés américaines à investir au Congo, en particulier dans le domaine pétrolier. Ce regrettable développement met le Congo dans l'obligation de réexaminer ses relations économiques avec les Etats-Unis en tenant compte notamment que d'autres pays partenaires commerciaux, au Canada, en Europe, en Inde et en Chine respectent la souveraineté des pays avec lesquels ils entretiennent des relations économiques.

Le Turnover Order est de nul effet au Congo et ne saurait prévaloir sur l'autorité souveraine de notre pays d'appliquer ses propres lois sur son territoire. J'ai donc le regret de vous informer que, pour les raisons indiquées dans la présente lettre, la République du Congo rejette le Turnover Order.

Veuillez agréer, Monsieur le Juge, l'expression de ma considération distinguée.

dphe

Hon. Sam Sparks United States District Judge United States District Court for The Western District of Texas Austin, Texas

U.S.A.

Copie: Hon. William H. Taft, IV

United States Department of State:

# EXHIBIT 7

### CRATER TO

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ORDER

F No. 251

CIVIL LIST No. 546 YEAR: 2005

REPUBLIC OF THE CONGO ON BEHALF OF THE CONGOLESE PEOPLE

REGISTER No. 477 OF JULY 4, 2005

In the year two thousand five; And on the fourth day of July;

Before us, Norbert Elanga, Presiding Judge of the Pointe-Noire Court of First Instance, holding an urgent public hearing in our Chambers in the Courthouse of said city;

With assistance from Marc Etiki, Attorney, Head Registrar of the Civil Sections of said Court;

With reference to the motion dated July 2, 2005 in Point Noire from the Republic of the Congo, Ministry of Hydrocarbons, with Irene Josiane Okoko, Hervé Obongui Nguie and Nadia Macosso as Legal Counsel, Attorneys at Law, B.P. 5137, Pointe-Noire;

Whereas in support of its motion, it stated: whereas AF CAP (which holds a claim against the Republic of the Congo according to a decision of the Supreme Court of the State of New York of May 9, 2000) based on the decisions of February 4 and 22, 2005 of the District Court, Western District of Texas, Austin Division, United States of America, CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited do not intend to allow the removal of the shares of crude oil that correspond to the royalties owed to the Republic of the Congo under the hydrocarbons production agreement of May 25, 1979;

Whereas the decisions of February 4 and 22, 2005 provide for the Court's control over the tax royalties owed to the Republic of the Congo, the payment of said royalties in cash to the Registrar of the Court in favor of AF CAP as payment of AF CAP's claim against the Republic of the Congo and of any additional sum the Court may order. These decisions also prohibit the Republic of the Congo and any person with knowledge of these decisions from conveying, concealing or alienating the Republic of the Congo's interests;

But whereas these decisions could not be executed in the Republic of the Congo;

Whereas, actually, a court decision banded down by a foreign jurisdiction, even when the obligor has renounced its immunity of jurisdiction and execution, cannot be executed *ipso jure* in a foreign country; whereas, to be executed, it must be submitted to the procedure for authorizing execution as provided for by Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure, according to which "unless there are diplomatic conventions that stipulate otherwise, decisions handed down by foreign courts and instruments received by foreign public or ministerial officers can be executed in the territory of the Congo only after having been declared enforceable by a Congolese jurisdiction that had ratione materiae jurisdiction to take cognizance thereof;"

Whereas in this case, the Republic of the Congo was not notified of the U.S. decisions of February 4 and 22, 2005, and whereas neither AF CAP, alleged obligee of the Republic of the Congo, nor CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited, third parties garnished, filed a motion with the Congolese Courts for the authority to execute the same U.S. decisions;

Whereas Article 50 of the Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution stipulates that property declared not subject to garnishment by the national law of each Contracting State may not be garnished even though it may be held by third parties;

Whereas the garnishment ordered by the U.S. jurisdiction is in conflict with International Public Order and the Republic of the Congo's sovereignty in that it is aimed at tax royalties, by their nature not subject to garnishment, and it interferes with the Republic of the Congo's exercise of its sovereignty in matters of taxation;

Whereas, therefore, since the issue of the delivery of any operator designated by the Republic of the Congo's shares of crude oil held by CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited is urgent and contains a certain peril, it is important to immediately order these companies to deliver said shares of crude oil to any operator designated by the Republic of the Congo;

Whereas based on the foregoing, the Republic of the Congo is requesting that, by urgent decision, the Court: - find that the Congolese Courts have not received any decision from a U.S. jurisdiction on the garnishment of the mining royalty owed to the Republic of the Congo's under the agreement of May 25, 1979; - find that the decisions of the District Court, Western District of Texas, of February 4 and 22, 2005 or that a decision from a foreign jurisdiction cannot be executed in Congolese territory without first having been the subject of the procedure of authority to execute before the Courts and Tribunals of the Congo; - find that the decisions of February 4 and 22, 2005 conflict with the public order and could not be declared enforceable by a Congolese jurisdiction; - order CMS Nomeco, Nuevo Congo Company and Nuevo Congo Limited to deliver the shares of crude oil to any operator designated by the Republic of the Congo, which is owed those shares in accordance with the provisions of the agreement of May 25, 1979 and the laws in effect; - order the *ipso jure* execution of the decision to be handed down notwithstanding any appeals; - rule on the costs as required by law;

Whereas in briefs dated July 2, 2005, CMS Nomeco Congo Inc., with Sylvie Nicole Mouyecket as Legal Counsel, P.O. Box 5316, Pointe-Noire, reacted as follows:

Whereas a certain number of U.S. jurisdictions have handed down decisions ordering the immobilization of shares of crude oil owed to the Republic of the Congo held by CMS Nomeco Congo Inc;

Whereas CMS Nomeco Congo. Inc. filed motions to have the proceedings terminated with several U.S. courts on the grounds that its delivery of the shares of crude oil to any operator designated by the Republic of the Congo would be compulsory under Congolese law, notwithstanding the existence of a decision to the contrary from a U.S. jurisdiction, and whereas one of the Courts has dismissed this motion, and the others have not ruled on the subject;

Whereas finally, in view of the fact that CMS Nomeco is a U.S. company, and that the proceedings in progress are U.S. proceedings, a decision from a Congolese jurisdiction requiring CMS Nomeco to deliver shares of crude oil to any operator designated by the Republic of the Congo would render CMS Nomeco liable to the risk of remitting double payment;

Whereas in fact, if such were the case, CMS Nomeco would be forced to deliver shares of crude oil to any operator designated by the Republic of the Congo in accordance with the decision of the Court of First Instance and would run the risk of also having to remit a payment to the United States to be in compliance with the decision of the U.S. Court;

Whereas CMS Nomeco is obviously a third party to the proceedings mentioned above, it should not have to be subjected to such consequences;

Whereas Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure provides that: "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

Whereas from this code it emerges that authority to execute is required only for decisions of foreign jurisdictions executed in Congolese territory;

Whereas the decisions of the District Court of the United States, Western District of Texas, were handed down, served and executed in the United States;

Whereas only the effects of this execution, carried out in the United States, are felt in the Congo through CMS Nomeco Congo Inc.;

Whereas the Republic of the Congo could not provide evidence of any instrument of execution whatsoever carried out in the Congo by AF-CAP, the U.S. company;

Whereas under these conditions, the Republic of the Congo cannot make valid use of the argument that its obligee observed the procedure for the authority to execute as though it were executing its decision in Congolese Territory;

Whereas the Republic of the Congo further supports its motion by the immunity from garnishment it enjoys under the law, in particular from Article 50 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution and Article 77 of the Charter of Government Corporations;

Whereas, however, it was noted above that CMS Nomeco Congo Inc. is only "a third party holder" of the shares of crude oil disputed by AF-CAP Inc., the U.S. Company, and the Republic of the Congo, pursuant to the U.S. decisions dated February 4 and 22, 2005, respectively;

Whereas the fact that CMS Nomeco has immobilized these shares of crude oil due to the decisions of the U.S. jurisdictions does not mean that CMS Nomeco Congo Inc. is a party effecting a garnishment;

Whereas CMS Nomeco Congo Inc. could not agree on this issue of immunity of garnishment that involves the main parties to the dispute, mainly AF-CAP Inc., the U.S. company, and the Republic of the Congo;

Whereas it is requesting that the Court: - find that a certain number of U.S. jurisdictions have handed down decisions ordering the immobilization of the shares of crude oil owed to the Republic of the Congo, now held by CMS Nomeco; - find that CMS Nomeco Congo is only a "third arty holder" of the immobilized shares of crude oil; - find that only the effects of this execution are felt in the Congo through CMS Nomeco; find that there is no instrument of execution whatsoever that has been carried out in Congolese territory;

Whereas consequently, find that there is no reason to order the delivery of the shares of crude oil requested by the Republic of the Congo; and - order the Republic of the Congo to pay the costs;

### BASED UPON WHICH, WE, THE JUDGE FOR URGENT MATTERS

Whereas the examination of the exhibits in the file shows that the U.S. court decisions that ordered the attachment of Congolese crude oil conflict with the Congolese laws in effect;

Whereas the Republic of the Congo is indeed a sovereign State and therefore a Government Corporation and Enterprise;

Whereas there is reason to apply to it the provisions of Article 30 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution which provides that "Compulsory distraint and preventive measures shall not apply to persons enjoying immunity from execution. However, any unquestionable debts due for payment belonging to public corporations or enterprises, regardless of their form and mission, may equally be compensated with unquestionable debts due for payment belonging to any person owing them, subject to reciprocity;"

Whereas furthermore, the decisions of the U.S. courts, including for the attachment of the Congolese crude oil, have not yet been authorized for execution;

Whereas in fact Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure (CPCCAF) provides that "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

Whereas ultimately, there is therefore no reason to use the decisions of the U.S. courts as arguments against the Congolese State;

Whereas, moreover, Article 50 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution (UAOSRPME) provides that "property declared not subject to attachment by the national law of each Contracting State may not be attached, even if it is held by third parties;

Yet, whereas the oil royalties are declared not subject to attachment by Congolese law;

Whereas ultimately, it should be found that the attachment of the Congolese crude oil ordered by the U.S. courts is in conflict with public order and interferes with the sovereignty of the Congolese State;

Whereas with regard to the foregoing, there is reason to find that the Congolese Republic's motion is in order and admissible;

Whereas, in substance, it is grounded; whereas there is reason to accept it;

Whereas it is therefore essential to find that the Congolese Courts have not received any decision handed down by a U.S. jurisdiction on the attachment of the oil royalty owed to the Republic of the Congo under the convention of May 25, 1979;

Whereas there is reason to unconditionally dismiss all the arguments made by Nomeco;

Whereas Nomeco Congo Inc. has lost the proceedings;

Whereas there is reason to require that it pay the costs in accordance with Article 57 of the CCCAFP;

### NOW THEREFORE

Ruling in public based on the arguments of both parties on an urgent basis in a civil matter in the first instance;

On the merits, we refer the parties to enter an appeal as they shall advise;

But at this time, given the urgency and by way of advance;

We find that the Congolese Courts have not received any decision handed down by a U.S. jurisdiction on the attachment of the oil royalty owed to the Republic of the Congo under the convention of May 25, 1979;

We find that the U.S. court decisions or decisions of other foreign jurisdictions may not be executed in Congolese territory without first having been the subject of the procedure of the authority to execute with the Congolese Courts and Tribunals. We find that the Congolese oil royalties cannot be attached according to Congolese law;

We find that the U.S. court decisions that ordered the attachment of the Congolese crude oil are in conflict with the public order and interfere with the Republic of the Congo's national sovereignty;

Consequently;

We order CMS Nomeco, Nuevo Congo Company and Nuevo Congo Limited to deliver the shares of crude oil that are owed to any operator designated by the Republic of the Congo in accordance with the provisions of the agreement of May 25, 1979 and the laws in effect;

We require that this order be executed, and with the assistance of the law enforcement authorities in the event there is resistance;

We order the provisional execution of this order notwithstanding any appeals;

We order CMS Nomeco Congo Inc. to pay the costs.

And we have signed our Order with the Clerk,

The illegible signatures of the Presiding Judge and the Registrar follow. The recording follows.

Recorded in Pointe-Noire on July 4, 2005

Certified true execution copy, checked against the original, 5 pages Pointe-Noire, July 5, 2005

Head Registrar

In consequence thereof: the Republic of the Congo orders its registrars, based upon this application, to execute said judgment with the Attorneys General and Prosecuting Attorneys of the Appeals Courts and Courts of First Instance and to assist all commanders and law enforcement agencies and to assist them when they are required by law to do so.

In witness whereof, this execution copy has been signed and sealed by the Head Registrar of the Pointe-Noire Court of First Instance and delivered by him in the form of an execution copy.

[signed]

By the Court

Document Checked against the Original
The Head Registrar

R. Koud-Okouo, Attorney Head Registrar

# EXHIBIT 8

# AU NOM DU DO CONGO

ROLE CIVIL Nº 547 ANNEE: 2005

L'an deux mil oinque AU NOM DU PEUPLE CONGOLAIS

REPERTOTRE Nº 476

Par-devant nous Norbert ELENCA Président du Tribunei de Grande Instance de Pointe-Noire, tenant audience publique des référés en notre Cabinet sie au Palais de Justice de cette ville:

Assisté de Haitre Maro ETIKI, Greffler en Chef des Chambres Civiles audit Eri-

(/u la requête en date à Pointe Noire du 02 Juillet 2005 de la Bociété Nationa le des Patroles du Congo (SNPC) ayant pour conseils Maître Trêne Josiane OKOKO.

Hervé OBONGUI NGUIE et Nadia MACOSSO, Avocate à la Cour B.P 5137 Pointe-Noire:

Attendu quid l'appui de sa requête elle expose; que se prévalant de ce quielles ont été estates par la société àr cap(titulaire d'une argance sur la République du Congo suivant une décision de la Cour Suprême de l'Etat de New York, du 9 Hai 2000) par les décisions des p et 22 février 2005 de la Cour du District de It Cuest du Texas, Division Austin, Etats Unis d'Amérique, les sociétés CMS Nomaco Inc. Nuevo Congo Coppany et Nuevo Congo Limited estendent de pas permettre l'enlèvement des parts de pêtrele brut correspondant aux redevances dues à la République du Congo su titre de la convention pour la production d'hydrocarbures du 25 Mai 1979;

Que les décisions des 4 et 20 février 2005 pravoient le centrôle de la Cour sur les redevances fiscales dues à la République du Congo, le versement desdites redevances en humbraire au Greffe de la gour en faveur de AF GAP en réglement de la créance de celle-et sur la République du Congo ainsi que toute soume supplémentaire que la Cour ordonners ces déristons interdeent featement la République du Congo et toute personne ayant connaissance de ces décisions de transférer dissimuler ou de disposer des intérête de la République du Congo.

Que dans une lettre en date du 16 mai 2005 la société GHB Homago Inc déclare que les décisions américaines sont également appliquèles sux parte de pétrole brut revenent à la SNPC au titre de la convention du 25 Hai 1979;

Main que ces décisione ne pourraient être exécutées en République du Congo

Qu'en effet une dicision de Justice rendue par une juridiction étrangère même en présence de la rénonciation par le débiteur de son immunité de juridiction et d'exécution ne peut pas s'exécuter de plain droit en territoire étranger qu'elle doit, pour recevoir exécution être soumles à la procédure d'exéquator telle que prévue par l'article 200 du Code de Procédure Civile Commerciale Administrative et Financière selon lequel, manif conventions diplomatiques contraires, les jugements rendue par les Tribunaux étrangers et les actes reque par les Officier, publics ou ministériels étrangers ne sont susceptibles d'exécution sur le territoire congolais qu'après avoir été déclarés exécutoires par une juridiction Congolaise qui surait été donnée materias pour en connaître!

Qu'en l'eccurence, les décisions américaines des 4 et 22 février 2005 n'ont pas été notifiées à la ENPO et que ni la société AF CAP, prétendus créancière de la République du Congo, ni les sociétés CMS Boueco Inc, Nuevo Congo Company et Nuevo Congo Limited, tiers saisis, n'ont formulé devant les Tribunaux Congolais une demande d'exéquatur des mêmes décisions américaines;

Que l'article 50 de l'Acte Uniforme sur les Procédures Simplifiées de Regouvre ment et des Voise d'Exéqution dispose que les biens déclarés insaisissables par la loi nationale de chaque Etat Partie ne sont pas susceptibles de saiste slors même qu'ils seraient détenus par des tières

Que la seiale ordonnée par la juridiction américaine est contraire à la législation en vigueur en République du Congo; l'article 77 de la loi Nels/81 du 14

mars 1981 instituent la charte des Entreprises d'Etat dispose que les biens de



-2.

l'entreprise . Stat sont incaisiscables,

Qu'minsi,il sied,la question de livreison des parts de patrole brut de la ENPC détenues par les sociétés CHS Monson Instituevo Congo Company et Musvo Congo Limited étant progente et composant un péril certain,diordonner sur minute que ces sociétés livrent à la SNFO ses parts de patrole brut!

Caron consequence de ce qui précéde la SARC sollidite que par désisten de réferé d'heure à heure soit constaté que les fribunaux congolate ne sont saisis de
aucune décision rendue par une juridiction américaine et portent saisis des
parts de pétrole bint de la BARC au titre de la convention du 25 mai 19791-dit
que les décisions de la Cour du District de l'Ouest du Texas des 4 et 22 février
2005 ou qui une décision d'une juridiction étrangère ne peut séraceuter eur le
territoire congolate sans avoir présiablement fait l'objet de la projéque de
exaquatur devant les cours et Tribuneux congolate; constaté que les décisions des
têm exéquatoires pur une duridiction congolates; constaté que les décisions des
rées exéquitoires pur une duridiction congolates; ordenné aux soplétés CMS Nomeco
Nuevo Congo Company et Nuevo Congo bimités de livrer à la safc les parts de pétrole brut lui revenant, conformément aux dispositions de la convention du 25 mai
19791-ordenné l'exécution de décit de la décision à intérvenir noncustant toutes

Attendu que par furitures en date du 02 Julilet 2005, la sociaté ous nomeco Congo Instanant pour conseil Matera Sylvie Nicole MOUTECKET, a réagi en ces ter-

Que un certain nombre de juridictions Américaines ont rendu des décisions ordonnant l'immobilisation des parts de pétrole brut revenunt à la Société Nationale des Pétroles du Congo entre les mains de la Société GMS NOMECO Congo Eno;

Que si la société CMS NOMECO congo Inc est condemnée à livrer ces parts de particle brut à la Société Nationale des Pétroles du Congo en dépit du contenu de la décision d'une cour Américaine, celle-el risque de se trouver sons la contrainte d'une double shitgation de paiement.

Que la société CHS Nomeco Congo Ind a introduit des requêtes de non lieu auprès de plusieurs tours américaines au motif que sa libraison des parts de pétrole bruts à la Société Nationale des Pétroles du Congo serait chilgateire en Droit congolais nonobstant l'existence d'une décision contraire émanant d'une juridiction Américaine et que l'une de que Cours a rejeté cotta requête les autres ne

Cutenfin, compte tenu du fait que la sociaté des NOMECO CONGO INO est une société Américaine et que les procédures en cours sont des procédures Américaines, une décision émanant d'uns juridiction Congolaise obligeant la société CHS NOMECO Congo Ino à livrer des parts de pétrole brut à la EMPC exposerait la société CMS NOMECO CONGO ING au risque d'effectuer un double paiement;

Culen effet el tel était le cas la Société CMS MCMECO CONGO INO serait contrain te de livrer des parts de pêtrole brut à la SNPO en conformité avec la décision du Tribunal de Grande Instance tout en courant le risque de dévoir également effectuer un paisment aux Etats-Unis afin de se conformer à la décision de la Cour Américaine;

que la Société NOMEO CONGO INC étant manifestement un tiers aux procédures mentionnées ci-desaus, elle ne devrait pas avoir à subir de telles conséquences

Que l'article 299 du OPCCAF dispose: Sauf conventions diplomatiques contraires les jugements rendus per les tribungur étrangers et les actes reçus par les officiers publics ou ministériels étrangers na sont susceptibles d'exécution sur la territoire Congolais qu'après avoir été déclarés exécutoires per une juridiction Congolaise qui aprait été compétente rations materises pour en connaîtres.

qu'il ressort de ce texte que l'exequatur n'est requis que pour les décisions des juridictions étrangères exécutées sur le territoire Congolais;

Que or les décisions de la Cour de District des Etate-Unis, District de l'Ouest



du Texas, out & rendues, signéfilées et exécutées et exécutées aux Etate. Unis

que seule les effets de cette extention opérée sur lites-Unis sont ressantis su Congo à travers la société CMB NOMECO CONGO INC.

Que la Societé Nationale des Pétroles du Congo ne saurait rapporter la preuve deun quelconque acte d'exécution accompli au Congo par la Société Américaine AF-CAF

que la SNPC soucetend en outre sa demande par itimmunité de sainte dont elle béneriore de la loi notement des erticles 50 de l'Acte Uniforme CHADA portent Organisation des Precidures Simplifiées de Recouvrement des Grégodes et des Voies di Execution et 77 de la Charte des Entreprises d'Etat

Que or il a été rappelé supra que la société CHE NOMECO Congo Inc. ni est que l'tiera détentemen des parts de pétrole brut querellées entre la société américaine AFACAP Inc et la SMPO suite aux décisions Américaines en dates respectives du C4

Que le fait pour la société CNS NOMEGO Congo Inc diavoir immobilisé com parts de petrole brut, muite aux décisions des juridictions Américaines, ne signifie pas que In Societé ems Nomeco Congo Inq revet la qualité de salsissant,

que la société CHS NOMECO Congo Ino ne soureit opiner sur cette question d'immunité de saiele qui intéresse les principales parties au litige, notamment la So-

Que le Juge salei, constatera que un certain nombre de juridictions Américaines ont rendu des décisions ordensent l'immobilisation des parts de pétrole brut re-Fenent & la Republique du Congo entre les mains de la Société CMB NOMECO CONCO INC que la sociate CMS NCHECO CONGO INC n'est questiere détenteurs des parts de parole brut immobilizées; dira que seule les effete de cette exécution sont ressentis au congo à travers la seciété com remero congo Inc, constatera l'absence d'un quelconque acte d'exicution accompli sur le territoire Congolais;

Qu'en conséquence il dire n'y avoir lieu à ordonner la livreison des parts de pétrole brut sollicités par la République du Congo; Condamnera la République du

# SUB QUOI NOUS JUGE DES REFERES

Attendu qu'il résulte de l'examen des pièces du dossier; que la Société Nationale des pétroles du Congo SNPG, est une entreprise d'Etat; Quid es titre elle bénéficie ... de l'imminité de saisie prévue à l'article 77 de la charte nationale des entreprises d'Etat qui dispose que les bient de l'entreprise d'Etat sont inestates delles sauf les cas prévus par la procédure de liquidation de l'entreprisen,

Attendo que dans ces conditions, 11 y a lieu de faire application des dispositions de l'article 30 de l'Aute Uniforme portant Procédures Simplifiées de Reconvrement n

Qu'en effet l'article 30 de l'Acte Uniforme sur les Prodédures Simplifiées de Recouvrement et des Voies d'Exécution de 1ºOHADA qui disposé quenie exécution forche et les mesures conservatoires ne sont pas applicables aux personnes qui bénéfi-

Attendu qu'en l'espèce, la ENPC est une entreprise d'Etat et bénéficie de l'immunité d'exécution,

Qually a lieu de lui appliquer les dispositions de l'article 30 de l'Acte Uniforme our les Procédures Simplifiées de Recouvrement et des Voies d'Exécution de

Attendu agelement que les décisions des Tribunaux Américains dont exécution, ne sont pas encore exequaturées

Attendu en effet que l'article 299 du Code de Procédure Civile, Commerciale, Admi- ! nistrative et Financière (CPCCAF) dispose que " Sauf conventions diplomatiques con-



traires les jug nes rendus par les tribunaux étrang et les actes reque par les officiers publics ou ministériels étrangens ne sont susceptibles desaguition sur le territoire congolais quisprés avoir été déclarés exécutoires par une juridiction congolaise qui surait été compétenteurations matériases pour en connaîtres,

Attendu qu'il ce jour ni le binificiaire desdite jugemente ni la scoieté NEMECO n'ent saisi la juridiction congolaise pour solliciter l'exéquatur desdites déci-

Attendu en conséquence qu'il n'y a lieu doza à exécution desdites décisions

Attendu qu'au regard de ce qui précède, il y a lieu de dire que la requête de la société SNPO est donc régulière et récevables.

Attende au fond quiville est fondée;

Quill y a lieu dry faire droit;

Attendu qu'il y a lieu de rejeter purement et simplément tous les arguments developpés par la société NCMEGO!

Attendu que la société NOMECO CONCO INC a succombé su procési

Qu'il y a lieu de mettre les dépens à sa charge conformément à l'article 57 du Code de Procédure Civile, Commerciale, Administrative et Financière,

### PAR CES HOTIFS

Btatuant publiquement contradictoirement en référé en matière d'exécution et en premier ressort;

Au principal, Renvoyons les parties à mieux se pourvoir ainsi qu'elles en avise-

Male dos à présent, vu l'urgence et per provieton,

Constatons que la SNPC est bénéficiaire de l'immunité d'exécution;

Constitues que les décisions judiciaires américaines rendues en la matière ne sont pas encore exéquaturées au Congo:

Constatone que l'esdites décisione sont contraires à l'ordre publiq

### En consequence:

Ordonnous sux sociétés CMS NOMECO, Nuevo Congo Gompany et Nuevo Congo Limited de livrer les parts de pétrole brut revenant à la SNPC conformément aux dispositions de la convention du 25 Mai 1979;

Diseans que la présente ordonnance sera exécutée en cas de résistance avec l'aide de la lorge Publique.

Ordomens I exécution provisoire de la présente erdonnance nonobstant toutes voies de recours:

Mettons les dépens à la charge de la société CMS NOMECO CONGO INC;

\*\*\*/\*\*\*

# Et avons signé notre Ordonnance avec le Greffiere/so

Suivent les signatures (e) illisibles du Président et du Greffier suit la mention d'enregistrement Enregistré à Pointe-Noire le . QU Pour expédition colletionnée certifiée conforme à l'original établie en. Pages.

POINTE-NOIRE, 10. US Juillet ans Le Greffier en Che

ин гольяци на съ Кариобаци ин Сандо mande el ordonne à lous huissiers sur cu requir de meurs ledit juyen en à crecution BUX Procureurs Generally of SUR Procuries C de la Prevolique Près les Cours et risposses. de Grande instance d'y tenir la mar a faire de la force autobles et officers de la force autobles et is veter main for lacentis as manyed ANDWARD THE LIMITED A

> to 16 den in thesenia aspertier en red du tribunal de G. ... nerse sous forms de et est.

Me R. KOUD-OKOUO

Gréffier en Chef

### EXECUTION COPY

CIVIL LIST No. 547 YEAR: 2005

F No. 251

REPUBLIC OF THE CONGO ON BEHALF OF THE CONGOLESE PEOPLE

REGISTER No. 476 OF JULY 4, 2005

In the year two thousand five: And on the fourth day of July;

Before us, Norbert Elanga, Presiding Judge of the Pointe-Noire Court of First Instance, holding an urgent public hearing in our Chambers in the Courthouse of said city;

With assistance from Marc Etiki, Attorney, Head Registrar of the Civil Sections of said Court;

With reference to a motion dated July 2, 2005 in Point Noire from Société Nationale des Pétroles du Congo (SNPC), with Irêne Josiane Okoko, Hervé Obongui Nguie and Nadia Macosso as Legal Counsel, Attorneys at Law, B.P. 5137, Pointe-Noire;

Whereas in support of its motion, it stated: whereas AF CAP (which held a claim against the Republic of the Congo according to a decision of the Supreme Court of the State of New York of May 9, 2000) carried out an attachment against Nuevo Congo Company and Nuevo Congo Limited, based on the decisions of February 4 and 22, 2005 of the District Court, Western District of Texas, Austin Division, United States of America, CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited do not intend to allow the removal of the shares of crude oil that correspond to the royalties owed to the Republic of the Congo under the hydrocarbons production agreement of May 25, 1979;

Whereas the decisions of February 4 and 22, 2005 provide for the Court's control over the tax royalties owed to the Republic of the Congo, the payment of said royalties in cash to the Registrar of the Court in favor of AF CAP as payment of AF CAP's claim against the Republic of the Congo and of any additional sum the Court may order. These decisions also prohibit the Républic of the Congo and any person with knowledge of these decisions from conveying, concealing or alienating the Republic of the Congo's interests;

Whereas in a letter dated May 16, 2005, CMS Nomeco Inc. represented that the U.S. decisions are applicable as well to the shares of crude oil due to the SNPC under the agreement of May 25, 1979;

But whereas these decisions could not be executed in the Republic of the Congo;

Whereas, actually, a court decision handed down by a foreign jurisdiction, even when the obligor has renounced its immunity of jurisdiction and execution, cannot be executed ipso jure in a foreign country; whereas, to be executed, it must be submitted to the procedure for authorizing execution as provided for by Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure (CPCCAF), according to which: "unless there are diplomatic conventions that stipulate otherwise, decisions handed down by foreign courts and instruments received by foreign public or ministerial officers can be executed in the territory of the Congo only after having been declared enforceable by a Congolese jurisdiction that had ratione materiae jurisdiction to take cognizance thereof;"

Whereas in this case, the SNPC was not notified of the U.S. decisions of February 4 and 22, 2005, and whereas neither AF CAP, alleged obligee of the Republic of the Congo, nor CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited, third parties garnished, filed a motion with the Congolese Courts for the authority to execute the same U.S. decisions;

Whereas Article 50 of the Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution stipulates that property declared not subject to garnishment by the national law of each State that is a Party may not be garnished even though it may be held by third parties;

Whereas the garnishment ordered by the U.S. jurisdiction is in conflict with the laws in effect in the Republic of the Congo; Article 77 of Law No. 13/81 of March 14, 1981, creating the Charter of Government Corporations, provides that the property of Government Corporations is not subject to garnishment;

Whereas, therefore, since the issue of the delivery of the SNPC's shares of crude oil held by CMS Nomeco Inc., Nuevo Congo Company and Nuevo Congo Limited is urgent and contains a certain peril, it is important to immediately order these companies to deliver to the SNPC its shares of crude oil;

Whereas consequently, based on the foregoing, the SNPC is requesting that, by urgent decision, the Court: - find that the Congolese Courts have not received any decision from a U.S. jurisdiction and on the garnishment of the SNPC's shares of crude oil under the agreement of May 25, 1979; - find that the decisions of the District Court, Western District of Texas, of February 4 and 22, 2005 or that a decision from a foreign jurisdiction cannot be executed in Congolese territory without first having been the subject of the procedure of authority to execute before the Courts and Tribunals of the Congo; - find that the decisions of February 4 and 22, 2005 conflict with the public order and could not be declared enforceable by a Congolese jurisdiction; - order CMS Nomeco, Nuevo Congo Company and Nuevo Congo Limited to deliver the shares of crude oil to the SNPC, which is owed those shares in accordance with the provisions of the agreement of May 25, 1979; - order the ipso jure execution of the decision to be handed down notwithstanding any appeals; - rule on the costs as required by law;

Whereas in documents dated July 2, 2005, CMS Nomeco Congo Inc., with Sylvie Nicole Mouyecket as Legal Counsel, reacted as follows:

Whereas a certain number of U.S. jurisdictions have handed down decisions ordering the immobilization of shares of crude oil owed to Société Nationale des Pétroles du Congo held by CMS Nomeco Congo Inc;

Whereas if CMS Nomeco Congo. Inc. is ordered to deliver these shares of crude oil to Société Nationale des Pétroles du Congo despite the content of the decision of a U.S. Court, the SNPC may find itself under the constraint of a dual obligation for payment;

Whereas CMS Nomeco Congo. Inc. filed motions to have the proceedings terminated with several U.S. courts on the grounds that the delivery of the shares of crude oil to Société Nationale des Pétroles du Congo would be compulsory under Congolese law, notwithstanding the existence of a decision to the contrary from a U.S. jurisdiction, and whereas one of the Courts has dismissed this motion, and the others have not ruled on the subject;

Whereas finally, in view of the fact that CMS Nomeco Congo Inc. is a U.S. company, and that the proceedings in progress are U.S. proceedings, a decision from a Congolese jurisdiction requiring CMS Nomeco Congo Inc. to deliver shares of crude oil to the SNPC would render CMS Nomeco Congo Inc. liable to the risk of remitting double payment;

Whereas in fact, if such were the case, CMS Nomeco Congo Inc. would be forced to deliver shares of crude oil to the SNPC in accordance with the decision of the Court of First Instance and would run the risk of also having to remit a payment to the United States to be in compliance with the decision of the U.S. Court;

Whereas Nomeco Congo Inc. was obviously a third party to the proceedings mentioned above, it should not have to be subjected to such consequences;

Whereas Article 299 of the CPCCAF provides that: "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

Whereas from this text it emerges that authority to execute is required only for decisions of foreign jurisdictions executed in Congolese territory;

Whereas the decisions of the District Court of the United States, Western District of Texas, were handed down, served and executed in the United States;

Whereas only the effects of this execution, carried out in the United States, are felt in the Congo through CMS Nomeco Congo Inc.;

Whereas Société Nationale des Pétroles du Congo could not provide evidence of any instrument of execution whatsoever carried out in the Congo by AF-CAP, the U.S. company;

Whereas the SNPC further supports its motion by the immunity from garnishment it enjoys under the law, in particular from Article 50 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution and Article 77 of the Charter of Government Corporations;

Whereas, however, it was noted above that CMS Nomeco Congo Inc. is only "a third party holder" of the shares of crude oil disputed by AF-CAP Inc., the U.S. Company, and the SNPC, due to the U.S. decisions dated February 4 and 22, 2005, respectively,

Whereas the fact that CMS Nomeco Congo Inc. has immobilized these shares of crude oil due to the decisions of the U.S. jurisdictions does not mean that CMS Nomeco Congo Inc. is a party effecting a garnishment;

Whereas CMS Nomeco Congo Inc. could not agree on this issue of immunity of garnishment that involves the main parties to the dispute, particularly AF-CAP Inc., the U.S. company, and the SNPC;

Whereas the Judge before whom the matter was brought shall find that a certain number of U.S. jurisdictions have handed down decisions ordering the immobilization of the shares of crude oil owed to the Republic of the Congo, now held by CMS Nomeco Congo Inc., whereas CMS Nomeco Congo Inc. is only a "third party holder" of the immobilized shares of crude oil; shall find that only the effects of this execution are felt in the Congo through CMS Nomeco Congo Inc.; shall find that no execution whatsoever has been carried out in Congolese territory;

Whereas consequently, the Court shall find that there is no reason to order the delivery of the shares of crude oil requested by the Republic of the Congo; and shall order the Republic of the Congo to pay the costs;

### BASED UPON WHICH, WE, THE JUDGE FOR URGENT MATTERS

Whereas the examination of the exhibits in the file shows that Société Nationale des Pétroles du Congo SNPC is a Government Corporation; whereas consequently it enjoys the immunity from garnishment stipulated in Article 77 of the National Charter of Government Corporations that provides that "the property of government corporations may not be garnished except in cases provided for by the procedure for the liquidation of the corporation;"

Whereas under these conditions, there is reason to apply the provisions of Article 30 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution,"

Whereas Article 30 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution provides that "enforcement and precautionary measures are not applicable to persons that enjoy immunity from execution;"

Whereas in this instance, the SNPC is a Government Corporation and enjoys immunity from execution;

Whereas there is reason to apply to it the provisions of Article 30 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution;

Whereas furthermore, the decisions of the U.S. courts, including execution, have not yet been authorized for execution;

Whereas in fact Article 299 of the Code of Civil, Commercial, Administrative and Financial Procedure (CPCCAF) provides that "Unless there are diplomatic conventions that stipulate otherwise, judgments handed down by foreign courts and official instruments by foreign public or ministerial officers may not be executed in the Congo until they have been declared enforceable by a Congolese jurisdiction that has ratione materiae jurisdiction to take cognizance thereof;"

Whereas as of today, neither the beneficiary of said decisions nor Nomeco have come before the Congolese courts to solicit the authority to execute said decisions;

Whereas consequently, there is therefore no reason to execute said U.S. decisions that have been handed down;

Whereas with regard to the foregoing, there is reason to find that the SNPC's motion is in order and admissible;

Whereas, in substance, it is grounded;

Whereas there is reason to accept it;

Whereas there is reason to unconditionally dismiss all the arguments made by Nomeco;

Whereas Nomeco Congo Inc. has lost the proceedings;

Whereas there is reason to require that it pay the costs in accordance with Article 57 of the Code of Civil, Commercial, Administrative and Financial Procedure;

### NOW THEREFORE

Ruling in public based on the arguments of both parties on an urgent basis in a civil matter in the first instance;

On the merits, we refer the parties to enter an appeal as they shall advise;

But at this time, given the urgency and by way of advance;

We find that the SNPC does enjoy immunity from execution;

We find that the decisions of the U.S. Courts handed down in this matter have not yet been authorized for enforcement in the Congo;

We find that said decisions are in conflict with the public order;

Consequently;

Filed 02/21/2007

We order CMS Nomeco, Nuevo Congo Company and Nuevo Congo Limited to deliver the shares of crude oil that are owed to the SNPC in accordance with the provisions of the agreement of May 25, 1979;

We require that this order be executed, and with the assistance of the law enforcement authorities in the event there is resistance;

We order the provisional execution of this order notwithstanding any appeals;

We order CMS Nomeco Congo Inc to pay the costs.

And we have signed our Order with the Clerk,

The illegible signatures of the Presiding Judge and the Registrar follow. The recording follows.

Recorded in Pointe-Noire on July 4, 2005

Certified true execution copy, checked against the original, 5 pages

Pointe-Noire, July 5, 2005

Head Registrar

In consequence thereof: the Republic of the Congo orders its registrars, based upon this application, to execute said judgment with the Attorneys General and Prosecuting Attorneys of the Appeals Courts and Courts of First Instance and to assist all commanders and law enforcement agencies and to assist them when they are required by law to do so.

In witness whereof, this execution copy has been signed and sealed by the Head Registrar of the Pointe-Noire Court of First Instance and delivered by him in the form of an execution copy.

[signed]

By the Court

Document Checked against the Original

The Head Registrar

R. Kond-Okono, Attorney Head Registrar

# EXHIBIT 9

# CMS NOMECO CONGO, LLC

Document 99-2

BP 212 Pointe-Noire République du Congo

Le 2 mars 2006

Monsieur le Directeur Général Ministère des Hydrocarbures Brazzaville

Monsieur le Président Directeur Général Société Nationale des Pétroles du Congo Pointe-Noire

Messieurs,

Dans le cadre des opérations effectuées sur le permis Marine 1 et conformément aux termes de l'Avenant à l'Accord d'Enlèvement, le prochain enlèvement par la SNPC du pétrole au titre de la redevance pétrolière et de sa participation est prévu pour fin avril. Comme vous le savez, des procédures judiciaires sont actuellement engagées par les créanciers judiciaires de la République du Congo à l'encontre de CMS Nomeco Congo Inc., The Nuevo Congo Company et Nuevo Congo Ltd.; ces procédures comprenant les actions engagées par Af-Cap Inc., Walker International Holdings Limited, FG Hemisphere Associates LLC et National Union Fire Insurance Company of Pittsburg, P.A. Dans le cadre de ces procédures, les créanciers judiciaires ont soutenu que les ordonnances de saisie-attribution et de remise (garnishment writs et turnover orders) délivrées par les juridictions américaines empêchent les sociétés concernées de permettre à la SNPC de prendre le pétrole au titre de la redevance pétrolière revenant au Congo ainsi que la part de pétrole revenant à la SNPC au titre de sa participation.

Le Congo et la SNPC ont obtenu en décembre 2004 et juillet 2005 des ordonnances judiciaires de la part d'un tribunal de Pointe-Noire, enjoignant CMS Nomeco Congo Inc., en tant qu'opérateur, de permettre à la SNPC à prendre le pétrole au titre de la redevance pétrolière revenant au Congo ainsi que le pétrole revenant à la SNPC au titre de sa participation. Ces enlèvements du pétrole revenant à la SNPC ordonnés par le tribunal congolais ont été effectués en décembre 2004 et en septembre 2005. La procédure judiciaire contestant les ordonnances de saisie-attribution et de remise (garnisment writs et turnover orders) est toujours en cours aux Etats-Unis et les demandeurs à ladite procédure soutiennent le fait que lesdites ordonnances empéchent CMS Nomeco Congo Inc., The Nuevo Congo Company et Nuevo Congo Ltd. d'autoriser la SNPC à prendre, au terminal de stockage, le pétrole au titre de la redevance pétrolière revenant au Congo ainsi que le pétrole revenant à la SNPC au titre de sa participation, nonobstant les ordonnances délivrées par la juridiction congolaise en décembre 2004 et en juillet 2005. De surcroît, en septembre 2005, le tribunal

fédéral de première instance a autorisé, dans l'affaire FG Hemisphere, la délivrance de nouvelles ordonnances de saisie-attribution et de remise (garnishment writs et turnover orders) et ce en dépit des ordonnances délivrées par la juridiction congolaise et, le 14 février 2006, de nouvelles ordonnances de saisie-attribution et de remise (garnisment writs et turnover orders) ont été signifiées à CMS Nomeco Congo Inc., The Nuevo Congo Company et Nuevo Congo Ltd.

Nous avons interjeté appel des décisions autorisant la délivrance des ordonnances de saisicattribution (garnisment writs) délivrées dans l'affaire FG Hemisphere en octobre 2004 et décembre 2005 devant la cour d'appel des Etats-Unis à la Nouvelle Orléans; les plaidoiries ayant été présentées à la cour d'appel dans le cadre de cette procédure le 7 février 2006. Nous attendons actuellement une décision de la cour d'appel. De plus, nous avons interjeté appel contre les ordonnances rendues dans l'affaire FG Hemisphere en septembre 2005, autorisant la délivrance de nouvelles ordonnances de saisie-attribution (garnishment writs) devant la même cour d'appel. Cependant, il est peu probable qu'une décision soit rendue dans l'une des procédures d'appel avant que le prochain enlèvement de la SNPC n'ait lieu, ce qui est prévu dans le cadre de l'Avenant à l'Accord d'Enlèvement.

FG Hemisphere et Af-Cap ont adopté la position que la prise de pétrole par la SNPC en vertu des termes des ordonnances rendues par la juridiction congolaise en décembre 2004 et juillet 2005, rend CMS Nomeco Congo Inc., The Nuevo Congo Company et Nuevo Congo Ltd. redevables du montant total de la valeur de pétrole enlevé par la SNPC. Nous nous attendons à ce que, dans l'hypothèse où la SNPC enlève du pétrole au titre de la redevance pétrolière et de sa participation en avril 2006, les créanciers judiciaires du Congo soutiennent le fait que CMS Nomeco Congo Inc., The Nuevo Congo Company et Nuevo Congo Ltd. devraient être tenues responsables du montant total du pétrole enlevé par la SNPC à raison de cet enlèvement dans le cadre des procédures judiciaires américaines.

A la lumière de ce qui précède, nous devons respectueusement vous informer qu'à la suite des injonctions et ordonnances prises dans le cadre des procédures judiciaires américaines, nous ne pouvons pas autoriser l'enlèvement, à partir du navire de stockage, du pétrole au titre de la redevance pétrolière revenant au Congo ainsi que du pétrole revenant à la SNPC au titre de sa participation, dans la mesure ou un tel enlèvement nous soumettrait à des actions en justice de la part des créanciers judiciaires du Congo aux fins de constater que nous sommes en violation des ordonnances des juridictions américaines et passibles de sanctions pour outrage à la cour ainsi que d'une condamnation à payer aux créanciers de la République un montant égal à la valeur totale du pétrole enlevé.

Nous apprécions l'attention que vous porterez aux éléments énoncés dans la présente lettre.

Dans l'attente de vous lire, nous vous prions d'agréer, Messieurs, l'expression de notre très haute considération.

Maryse Bernard Président

### CMS NOMECO CONGO, LLC

Document 99-2

BP 212 Pointe-Noire Republique du Congo

2 March 2006

The General Director Ministry of Hydrocarbons Brazzaville

The President and Chief Executive Officer Société Nationale des Pétroles du Congo Pointe-Noire

Dear Sirs,

In connection with operations on the Marine 1 permit, and pursuant to the terms of the Amendment to Lifting Agreement, the next oil lifting of royalty oil and working interest oil by SNPC would be expected to take place at the end of April. As you know, there is ongoing litigation brought against CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. by judgment creditors of the Republic of Congo, including litigation filed by Af-Cap, Inc., Walker International Holdings Limited, FG Hemisphere Associates LLC, and National Union Fire Insurance Company of Pittsburgh, P.A. In those proceedings, the judgment creditors have claimed that garnishment writs and turnover orders issued by the U.S. courts preclude the companies from permitting SNPC to take the Congo's royalty oil and SNPC's working interest oil.

The Congo and SNPC have obtained court orders in December 2004 and in July 2005 from a court in Point Noire that mandated that CMS Nomeco Congo Inc., as operator, permit SNPC to take the Congo's royalty oil and SNPC's working interest oil. The SNPC oil liftings that were ordered to take place by the Congolese court occurred in December 2004 and September 2005. The proceedings challenging the garnishment writs and turnover orders are still ongoing in the United States, and the claimants in those proceedings contend that the garnishment writs and turnover orders prevent CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. from permitting SNPC to take the Congo's royalty oil and SNPC's working interest oil from the storage terminal, despite the prior orders of the Congolese court in December 2004 and July 2005. Additionally, in September 2005, the district court in the FG Hemisphere case authorized the issuance of new garnishment writs, despite the court orders of the Congolese court, and on February 14, 2006, new writs of garnishment were served on CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd..

We have appealed to the U.S. Court of Appeals in New Orleans from the orders that allowed issuance of the garnishment writs in the FG Hemisphere case in October 2004 and December 2005, and arguments were presented to the Court of Appeals in those appeals on February 7, 2006. We are now awaiting a decision from the Court of Appeals. Additionally, we have appealed to that same appeals court the orders entered in the FG Hemisphere case in September 2005 that allowed issuance of the new garnishment writs. However, it is unlikely that a decision will be rendered in any of the appeals until after the next lifting by SNPC would be expected to take place under the terms of the Amendment to Lifting Agreement.

FG Hemisphere and Af-Cap have taken the position that SNPC's taking of oil under the terms of the Congo court orders in December 2004 and July 2005 renders CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. liable for the full amount of the value of the oil taken by SNPC in the SNPC liftings. It is our expectation that, in the event SNPC takes a lifting of royalty oil and working interest oil in April 2006, the judgment creditors of the Congo will contend that CMS Nomeco Congo Inc., The Nuevo Congo Company, and Nuevo Congo Ltd. should be held liable in the U.S. court proceedings for the full amount of the oil taken by SNPC in that lifting.

In light of the foregoing circumstances, we must respectfully notify you that in light of the writs and orders entered in the United States litigation, we cannot allow a lifting of the Congo's royalty oil and SNPC's working interest oil from the storage vessel, as such a lifting would subject us to claims by the Congo's judgment creditors that we are in violation of the U.S. writs and court orders and are subject to contempt sanctions and monetary liability for the full value of the oil lifted.

We appreciate your consideration of the matters set out herein and look forward to receiving your response.

Sincerely yours,

Maryse Bernard President

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9 2/2

PAGE 02/02



Société Nationale des Pétroles du Congo

ge social Brazzaville



CMS NOMECO LLC

B.P : 212 Pointe-Noire

Madame Maryse BERI

Président

Pointe-Noire, le 20 mars 2006

Objet: Votre lettre du 02 mars 2006

Madame,

Nous accuson; réception de votre lettre du 02 mars 2006 par laquelle vous nous informez que votre société ne peut autoriser l'enlèvement, courant avril 2006, à partir du navire de stockage, du pétrole revenant au Congo ainsi que du pétrole revenant de la SNPC, motif pris de ce que vous seriez en violation des ordonnances des juridictions Américaines vous interdisant de nons livrer du pétrole:

En réponse à cette lettre, nous voudrons vons faire notes que ces ordonnances ne nous sont en principe pes opposables, pour des raisons qui tiennent à la fois à l'ordre public interne et à l'ordre public international.

Aussi vous mettons-nous, par la présenté, en demeure de nous livrer les quantités de pétrole nous revenant en même temps que celles revenant su Congo (dont nous détenons le mandat de commercialisation) selon les procédures habituelles au terminal de CONKOUATI.

De ce qui précède, si à la date du 25 mars 2006 nous n'avions aucune réponse de votre part nous adresserons une requête à la juridiction compétente aux fins de préservation de nes droits.

Nous osons capérer que vous ne nous y contraindrez pas.

Dans cette attente.

Veuillez agréer, Madame, l'expression de nos meilleures salutations.

Le Président Directeur Génér

Denis Auguste Marie GOKA

<u>Cc</u>:

Ministro des hydrocarbures

M nistre de l'Economie, des Finances et du Budget

Direction Générale des Hydrocarbures

Etablissement public à caracière industriel et commercial au capital de 81, 334, 654, 844 francs CFA

She internet: www.sneo-group.com

B.P. ; 186 - Brezzavilla - Congo - Thi. : 242.81,09,64 Fex : 242.81.04.82

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#### Société Nationale des Pétroles du Congo

CMS NOMECO LLC B.B: 212 Pointe-Noire

Mrs. Maryse BERNARD
President

Subject: Your letter dated 02 March 2006

Case 1:05-cv-00762-SLR

Pointe-Noirs, 20 March 2006

Dear Madame,

We hereby acknowledge the receipt of your letter dated 02 March 2006, by which you inform us that your company cannot authorise the April 2006 lifting of the Congo and the SNPC's share of oil from the storage vessel, due to the fact that your company allegedly is in violation of American court orders preventing your company of delivering such oil.

In response to your letter, please note that these court orders, in principle, are not binding upon us for reasons of public policy (ordre public) and international public policy (ordre public international).

Consequently, we hereby put you on notice of delivering the quantities of oil that we as well as the Congo are entitled to (which we are authorised to authorise on their behalf) pursuant to the standard procedures at the CONKOUATI terminal.

Following the above, if we do not receive a response to our letter by 25 March 2006, we inform you that we will commence judicial proceedings in front of the relevant jurisdictions in order to secure the protection of our rights.

We hope that you will not force us to take such action.

In expectation of your response,

Sinserely,

The General Manager Denis Auguste Marie GOKANA

<u>Cc</u>: - Minister of Hydrocarbons

Minister of Economy, Finance and Budget

General Management of Hydrocarbons

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PAGE 02

### CMS NOMECO CONGO, LLC

BP 212 Pointe-Noire République du Congo

le 24 mars 2006

Société Nationale des Pétroles du Congo BP 622 Pointe-Noire Congo

Messieurs,

En réponse à votre lettre du 20 mars 2006 (que nous n'avons pas reçu avant le 24 mars), nous ne pouvons que confirmer les termes de notre lettre en date du 2 mars dernier. Nous regrettons vivement cette situation et espérons que vous comprendrez notre position.

Nous vous prions d'agréer, l'expression de notre haute considération.

Maryse Bernard Président

PJ: lettre du 2 mars 2006

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PAGE

### CMS NOMECO CONGO, LLC

**BP 212** Pointe-Noire République du Congo

24 March 2006

Société Nationale des Pétroles du Congo BP 622 Pointe-Noire Congo

Gentlemen,

In response to your letter dated 20 March 2006 (which we did not receive until 24 March), we can only confirm the terms of our letter dated 2 March. We deeply regret this situation and hope that you will understand our position.

Sincerely yours,

Maryse Bernard President

Enc: Letter of 2 March 2006

## COUR D'APPEL DE POINTE-NOIRE

REPUBLIQUE DU CONGO Unité - Travail - Progrès

### TRIBUNAL DE GRANDE INSTANCE DE POINTE-NOIR

## NOTIFICATION DE L'ORDONNANCE (Article 40 à 42 du C.P.C.C.F)

L'an-deux mil trois SIX ET 15 MICH TO TO TO THE MICH.
A la requête de SIE MANIONALE AS AS MANIONALE Et en vertu d'une ordonnance du Président du Tribunal de Grande Instance de Point-Noire, en date du LI MANIONALE Rendue à la suite d'une requête à lui présentée le LI MANIONALE SUITA
Desquelles requête, copie et ordonnance sont remises en temps que celles de présentes
J'ai
NOTIFIE OU ETANT ET PARLANT Dine Chiscise the month of 1 on 42 Pell.
Qui a reçu et visé l'original du présent acte ;
A comparaître devant le Tribunal de Grande Instance de Pointe-Noire à l'audien : civile qui sera tenue au palais de Justice dans la salle ordinaire des audiences Le
A CE QU'IL N'EN IGNORE
Je lui ai, étant et parlant comme dessus, laissé copie tant des présentes que de la requêmet de l'ordonnance dont le coût est de TRONS MILLE FRANCS CFA (3 000)
P.J.
CO PRE DE PERITIES Le Gresher Princip.
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PER 20290 CONFIDENTIAL

COUR D'APPEL DE POINTE-NOIRE TRIBUNAL DE GRANDE INSTANCE DE POINTE-NOIRE

REPUBLIQUE DU CONGO Unité\*Travail\*Progrès

GREEFE-CIVIL

	•	
ROLE CIVIL Nº		
REPERTOIRE Nº		
DU		

## ORDONNANCE FIXANT LA DATE D'AUDIENCE (Article 33)

Norber ELFNGA MACISTRAT	la Société Nationale des Pétroles Du Congo dite SNPC
	Pointe-Noire Président du Tribunal de Grande Instance de Pointe-Noire
Vu la requête de Mr, Mme ou Mile	S
Profession	Domicilié (e) à
Nationalité	et les pièces qui y sont jointes.
au lieu ordinaire de nos audiences a	CMS NOVECO Centro heures, la date à laquelle sera appelée l'affaire aux fins de statuer sur les mérites de ladite requête.
Profession	Domicilié (e)
Devra produire ses moyens de défe	nses au Greffe huit (8) jours au plus tard avant l'audience.
Mandons le Greffier du Tribunal	de Céans à l'effet de notifier la présente ORDONNANCE aux

parties accompagnées en ce qui concerne la partie défenderesse, d'une copie de la requête

introductive d'instance et de la liste des pièces déposées par le requérant.

27 Mars 2006

PER 20291 CONFIDENTIAL



# ETUDE MAITRE BERTRAND RODOLPHE MADASSOU



HUISSIER DE JUSTICE COMMISSAIRE-PRISEUR

②: 553-67-87 ☑: 911 P/Noire RC Email: m.adassou @ hotmail.Com

Année: 2006 Rép: 022/06

Dossier 022/06

# SIGNIFICATION COMMANDEMENT D'UNE ORDONNANCE

L'an deux mil six

Et le Vinct rept lans à 17630 mu.

A la requête de la Société Nationale des Pétroles du Congo en sigle S.M.P.C dont le siège est sis à Brazzaville, 146 Avenue Charles DE GAOLLE, B.P. 188, poursuites et diligences de son représentant légal;

Elisant domicile en tant que de besoiin pour les présentes en mon Etude;

J'ai, Maître Bertrand Rodolphe MAIDASSOU, Huissier de justice, Commissaire-Priseur, près la Cour d'Appel de Pointe-Noire et les Tribunaux y rattachés y demeurant BP. 911 Tél : 553.67.87 soussigné,

<u>Signifié</u> et en tête de celle des présentes laissé copie entière A :

La Société CMS MCMECO, dont le siègre est sis à Point Noire, Centre-ville, République du Compo ;

OU STANT ET PARLANT A : M- TWOCHEWITSCH

De la grosse en bonne et due forme exécutoire d'une ordonnance telle que rendue par Monsieur le Président du Tribunal de Grande Instance de Pointte-Noire en date du 27 mars 2006, répertoire n°275 et dont le dispositif est le suivant :

#### « PAR CES MOTITES:

Statuant publiquement, par réputé contradictoire en référé en matière d'exécution et can premier ressort ;

Equde située sur l'avenue Louis PORTELLA N°55, derrière l'Hôtel LA PORTENEGRINE

Au principal: Renvoyons les parties à mieux se pourvoir ainsi qu'elles en aviseront;

Mais des à présent, vu l'urgences et par provision ;

Constatons que les jugements américains du 23 décembre 2004, 17 septembre 2004, des 41 et 22 février 2005 et des ordonnances du 14 février 2006 n'ont jamais été exaquaturées par une juridiction compétente congolaise;

En conséquence,

Disons que les présentes décisions ne sont pas exécutoires à l'encontre de la S.N.F.C, partenaire de CMS NOMECO ;

Ordonnons l'exécution proviscoire de la présente ordonnence nonobstant toutes voiles de recours ;

Mettons les dépens à la charge die NOMECO ».

Et à même requête, demeure et élection que dessus,

j'ai, Huissier de justice susdit et soussigné

#### FAIT COMMANDEMENT : A la même

#### Société CMS NOMECO

De livrer sens délai à tous opérateurs que lui désignera la S.N.P.C, toutes les quantités d'hydrocarbures lui appartenant et détenues par elles en vertu de leur contrat de partenariat.

Lui déclarant que faute par lui de le faire, ma requérante usera de tous les moiyens de droit à sa disposition pour entrer en possession de ses produits.

Lui déclarant enfin que la présente signification lui est faite à telles fins que de droit.

#### DON'T ACITE

#### A CE QUI'ELLE N'EN IGNORE

Et je lui ai, étant et parlant comme dessus, laissé copie tant de la grosse que celle des perésentes dont le coût est de : CENT MILLE FRANCS CFA.

Employé pour copie deux feuilles au format du timbre à MILLE FRANCS CFA

de Justice

F\* 37

#### ORDONNANCS

IL CIVIL Nº 28D 50312005

SERTOILE Nº 275

L'an doux ail six: Et le vingt sept du pois de Mares

ter-devent nous Norbert ELENGA Irémident du Triburel de Grande Instance de Pointes Northe des publique des référés en notre Cabinet sis

NOM DU PEUR CONGOLAIS

NOM DU PEUR CONGOLAIS

Tot lemain. PACCE

to le requête en care a congo dite SNFC requite en date à Pointe-Noire du 22 Mars 2005 de la Société Re-

Attendu quià l'appui de ma requate, elle expose; Que dans le cadre de ses opirations, wile est partenaire de la Société CHS HOMECO CORROLLIC dema le permis Marine to

cuia ce titre,il est privu, au cours du mois d'avril 2006, l'enlàvement per elle d'une cargaison de pétrole au titre de la redevance pétrolière et de se participation dans ledit permise

que or, elle a été maisi par la Société ChS MONDOC COMBOLLO, par commism on date du C2 hara 2006, de ce quiune ofrie de décisions rendues par des juridictions apéricaines, prises dans le cadre des Procédures appoient la Elpublique du Congo à certaine de sem créanciere, faisant injonation à cette société de me pem permettre à elle de procéder à cet enlèvement;

quielle tient à préciser que les décisions des juridictions sagrissimes en faveur de AF-CAF Inc.halker International Holdings Limited, FG Hesdaphere Associates LLC et National Union Fire Insurance Company of Pittsburg, P.A. orianciera de la Ripublique du Congo, sême primes à limamentes eou encoutre, doivent faire l'objet d'une pronédure d'exéquatur, avant leur éventuelle execution au Congo:

que or à ce jour, elle n'a été notifiée, ni d'aucune décision des juridistimm ctions subricaines ordonnant la saisie attribution de mes emrgaisons, empore soins d'une décision d'exéquatur, ordonnent l'exécution des décisions amixichibes au Congra

Qu'à cet effet et tenent compte de tout ce qui précède, elle demende qu'il. ; laise à Fonsieur le Président du Tribunal de Grande Instance de Pointe-Roire, statuant suivant la procédure de référé d'heure à heure, d'ordonner: -Franiërement à la société CKS NOMECO CONGO,ILC de na pas exécutor les désiaions des juridittions eméricaines, qui fauts d'exéquatur, ne peuvent pas sf executer au Congo: enviénement, le Tribunal devrait faire injonction à la Société El S NOMBOO CONDO,LLC d'autoriser et d'organiser l'anhivement de la cargainon de pétrole de qualité Yombo prévà au mois d'Avril 2005, tel que occivenu avec eller

#### TUR CUOI NOUS JUGE DES REFERES

attendu qu'il résulte de l'examen des pièces du dossier qu'en l'espèse. L etagit de l'exicution des dipinions judiciaires rendues par les Tribunaux Américains en date du 14 Février 2006,not≅mment des ordonn≅ndes de maisieattribution et de remise;

que ces ordonnances ont été signifiées à CMS NOMECO Inc The RUEVO COMOC Company at NUEVO CONGO LTD:

Attendu qu'il est constant que cas décisions n'ont jameis été signifiées ni à l'Etet Congolais, ni à la SNPC;

Attendo que ces décisions n'ont jamais été axéquaturées au Congo conformiment 4

cont à la législation Congolaine,

Attendu qu'il y a lieu en l'espèce de faire application des dispositions de l'article mon du Code de Procédure Civile, Commerciale, Administrative et Financières

tue en effet, l'erticle 709 dudit Code dispose que Cauf souventions diplomaticues contraires, les jugements rendus par les Tribunaux étrangers et les actes reque par les Officiers quòlics ou ministériels étrangers ne sont susceptibles d'exécution sur le territoire Congolais qu'après evoir été déclarés exicutelmes par une juridiction Congolaise qui surait été compétante retions saturises pour en consitres:

Attendo ou regard de qui précède qu'il y a lieu de dire qu'il n'est pas loisible à la 3 5 50 800 de faire application des décisions Américaines non exéquaturées à l'encontre de la SAFC:

Attendu que dans ses conditions il y a lieu de dire que la requête de la sEFC est dons régulière et resevable en la forme;

Attendu au fond qu'en vertu de l'article 207 du Codé de Procédure Civile, Commerciale, Administrative et Financière; Cu'il y a lieu de dire que cette rescuéte est fondée;

cutil y a lieu diy faire droit;

Attendu qu'il échet d'ordonner à le lociété CES NONECO de livrer sens délais à tout opérateur que lui désignere le SNEC toutes les quantités d'hydreompheres. Lui appartement et détennes par elle en vortu de leur contrat de partemeriate

Attendu que la Société CFS MCESCO bien que régulièrement convaquée, a par le bisis de son Conseil, Maître FONYECKET, Avont à la cour dit qu'elle ne pouvait peu conclure et qu'elle attendait les instructions du FDG de MONECO depuis Londres, la capitale anglaise, n'a ni déposer de aéroire pour se défense;

Attendu qu'il y a lieu de donner défaut à son encontre et de mettre les dépens à so charge;

#### FAR CLE POTTE

Statuant publiquement, par réputé contradictoire en référé en matière d'ambantion et en presder ressort;

Au principal; Penvoyons les parties à mieux se pourvoir sinsi qu'elles en aviseront;

lais des à présent vu l'argence et par provisions :

Constatons que les jugements ambricains du ex Décembre 2004,47 Septembre 2074, des h et re Sarier 2005 et des ordonnences du 14 Férrier 2005 nécet jameis été exécusturées par une juridiction compétants Congolsisse;

Sh consequence:

Discus que les présentes décisions ne sont pas exécutoires à l'enocutre de La CHE Capertermire de CAS BOX BOX |

Ordonnous done à la société Or S NO-ECO de livrer mans délai à tous opérameteurs que lui désigners-la SNPC, toutes les quantités déhydrocarbures lui appartenent et détenues par elle en vertu de leur contrat de partenariste

Ordonnons l'exécution provisoire de la présente Ordonnance nonchetant toutes voies de resours:

. ettona les déjens à le charge de lu 7 - 7 Rong it syons signé notre Ordonnence avec le Preffier./~

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TE-HOSSE dag - MAR 2106 . Le Greffier en Shef

Maitre Ernest 1.891.A Greffier en Chef IN CONSEQUENCE LA REPUBLIQUE U CONSU-MANNE ET ORDONNE À TOUS HUSSIERS SUR CE REC'UE DE METTRE L'EDIT JUGEMENT À EXECUTION AUX PROCUREURS GENEVAUX ET AUX PROCUREURS DE LA REPUBLIAGE PRÉS LES COURS ET TRIBUNAUX DE GRANDE INSTANCE (14 TENIR LA MAIN À TOUS COMMANDANTS ET OFFICIERS DE LA FORCE PUBLIQUE DE PRÈTER MAIN FORCE LORSCHULS ENSERDIT

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PARLE TRIPINGS
COLLATIONS 7 MAD 2006
LEGREFFICHERS

Maitretriest FRM # Greffier en Chef

Filed 02/21/2007

### Etude Maitre Bertrand Rodolphe Madassou Bailiff Auctioneer

Year 2006

Rep: 22/06

File 022/06

#### SERVICE OF COURT ORDER AND SUMMONS

On 27 March 2006, at 5:30 pm

At the request of the Société Nationale des Pétroles du Congo (SNPC), whose registered office is located at Brazzaville, 146 Avenue Charles de Gaulle, BP 188, represented by its legal representative, with address for service for the purposes hereof in my Offices;

I, the Undersigned Process Server, Mr Bertrand Rodolphe Madassous, Bailiff (huissier) and auctioneer (commissaire-priseur) with the Court of Appeal of Pointe-Noire and Courts thereunder, there residing at BP 911, Tel 553.67.87

Have served this execution copy and a full copy hereof to:

CMS Nomeco, whose registered office is located at Pointe-Noire, Centre-Ville, Republic of the Congo.

Served in person to: Mr Iwdchewitsch

The execution copy of the court order was thus duly served as handed down by the President of the Pointe Noire Tribunal de Grande Instance and dated 27 March 2006, with docket no. 275, and which operative part states as follows:

#### "FOR THESE REASONS:

Ruling in the first instance on an urgent interlocutory petition regarding enforcement in a public session by way of a judgment deemed to have been given after a hearing of all sides;

Hereby invite the parties to bring their action before the appropriate courts;

But in view of the urgency of the matter and as a provisional measure:

- Note that the U.S. rulings of 23 December 2004, 17 September 2004, [11] and 22 February 2005, and the court orders of 14 February 2006 have never been declared enforceable by a competent Congolese court;

Therefore,

Hold that such rulings are not enforceable against SNPC, partner of CMS Nomeco;

Hereby order the immediate enforcement of this order notwithstanding appeal; Order Nomeco to pay the costs."

And pursuant to this same request made by the petitioning party named above,

I, the undersigned Process Server as set out herein,

Hereby summon CMS Nomeco to immediately deliver, to any operators that the SNPC may designate, any and all amounts of hydrocarbons belonging to SNPC or in its possession under their partnership agreement.

Declare that subsequent to any failure on its part to comply with this demand, the petitioner will use all legal means available to obtain possession of its goods.

Hereby declare that this service is made for all such legal purposes

In witness whereof

May the party take notice hereof

I have delivered this execution copy and a copy hereof personally as set out above, for which costs were: ONE HUNDRED THOUSAND CFA Francs.

For copying two sheets stamped with a duty of 1000 CFA.

[Bailiff's signature]

#### ORDER

Rendered on 27 March 2006,

Before the Honorable Norbert Elenga, President of the Pointe Noire Tribunal de Grande Instance, ruling in a public session for urgent interlocutory matters in chambers at the Court of Justice of that city,

Assisted by Mr. Marc Etiki, Head Court Clerk for the Civil Division of said Court,

Subsequent to a request made by the Société Nationale des Pétroles du Congo (SNPC) in Pointe-Noire and dated 22 March 2006;

Whereas in support of this request, SNPC states that as part of its business, it has a partnership with the Société CMS Nomeco Congo, LLC in the Marine 1 permit.

That in this capacity it had been planned that SNPC would pick up a cargo of petroleum in April 2006 as part of the oil royalty and for its participation in such permit.

SNPC was thus notified by CMS Nomeco Congo in a letter dated 02 March 2005 of a series of rulings handed down by courts in the United States and rendered in the proceedings between the Republic of Congo and some of the country's creditors, and ordering CMS Nomeco not to allow SNPC to pick up the cargo.

SNPC wishes to specify that even if such rulings of the United States courts are against the Republic of the Congo and in favor of AF-CAP Inc. Walker International Holdings Limited, FG Hemisphere Associates LLC, and National Union Fire Insurance Company of Pittsburg, PA, all of whom are creditors of the Republic of the Congo, the rulings must be the subject of an exequatur procedure before they can be enforced in Congo.

At present, SNPC has not been notified of any decision from the United States courts ordering the garnishment of its cargo, much less an exequatur decision ordering the enforcement of the U.S. court rulings in Congo.

That to that purpose and in light of the foregoing, SNPC requests that the President of the Pointe-Noire Tribunal de Grande Instance, ruling in a urgent interlocutory proceedings, order:

- first, that the company CMS Nomeco Congo, LLC not execute the rulings of the U.S. courts which, failing exequatur, cannot be enforced in Congo;
- second, that the Court order CMS Nomeco Congo LLC to authorize and arrange for the pick-up of the Yombo-quality petroleum cargo planned for April 2006 as agreed with SNPC;

#### JUDGE'S FINDINGS

Whereas a review of the exhibits in the file show that this case involves the enforcement of court rulings handed down by the U.S. courts on 14 February 2006, and in particular garnishment and seizure orders;

These orders were served on CMS Nomeco Inc, The Nuevo Congo Company and Nuevo Congo Ltd.

Whereas it is clear that these rulings were never served on either the Congolese Government or SNPC;

Whereas these rulings have never received exequatur in Congo pursuant to applicable Congolese legislation;

Whereas in this case it is appropriate to implement the provisions of article [99] of the Civil, Commercial, Administrative and Financial Procedure Code;

Article [99] of that Code provides that save diplomatic agreements to the contrary, judgments handed down in foreign courts and documents received by public or ministerial officers from foreign countries may only be enforced upon Congolese territory after receiving exequatur from a Congolese court that has *ratione materiae* jurisdiction to hear the case.

Whereas in view of the foregoing, CMS Nomeco should not implement the U.S. court rulings against SNPC that have not received exequatur;

Whereas in these circumstances, we may hold that SNPC's request is duly formed and admissible;

Whereas on the merits, under article 307 of the Civil, Commercial, Administrative and Financial Procedure Code, there are grounds for granting the request;

Therefore the request should be granted.

Whereas CMS Nomeco should therefore be ordered to immediately deliver, to any operator SNPC may designate, any and all amounts of hydrocarbons belonging to and held by SNPC under their partnership agreement;

Whereas CMS Nomeco, duly summoned, has expressed via its Counsel, Mr Mouyecket, Avocat à la Cour, that it could not make submissions and was awaiting instructions from the Nomeco Chairman in London, and accordingly has not submitted any pleadings in its defense;

Whereas it is therefore appropriate to rule against it and sentence it to the costs;

#### FOR THESE REASONS

Ruling in the first instance on an urgent interlocutory petition regarding enforcement, in a public session by way of a judgment deemed to have been given after a hearing of all sides;

Hereby invite the parties to bring their action before the appropriate courts;

But in view of the urgency of the matter and as a provisional measure:

- Note that the U.S. rulings of 23 December 2004, 17 September 2004, [11] and 22 February 2005, and the court order of 14 February 2006 have never been declared enforceable by a competent Congolese court;

Therefore,

Hold that such rulings are not enforceable against SNPC, partner of CMS Nomeco;

Hereby order CMS Nomeco to immediately deliver, to any operators that SNPC may designate, any and all amounts of hydrocarbons belonging to and held by SNPC under their partnership agreement

Hereby order the immediate enforcement of this order notwithstanding appeal;

Order Nomeco to pay the costs.

In consequence thereof the Republic of the Congo orders its bailiffs, based upon this application, to execute the said judgment with the Attorneys General and Prosecuting Attorneys of the courts of appeal and the district courts to assist all commanders and law enforcement agencies to lend a hand when they are required to do so.

In witness whereof, this execution copy has been signed and sealed by the Chief Clerk of the Pointe-Noire District Court and delivered by him in the form of an execution copy.

Signed by the Chief Clerk [Chief Clerk signature]